

By Parker

S.B. No. 411

A BILL TO BE ENTITLED

AN ACT

relating to the continuation of the Texas Department of Labor and Standards under the new name, the Texas Department of Licensing and Regulation, and to the administration and functions of that department; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. DEPARTMENT OF LICENSING AND REGULATION

SECTION 1.01. The Revised Statutes are amended by adding Title 132A to read as follows:

TITLE 132A. TEXAS DEPARTMENT OF LICENSING AND REGULATION

Art. 9100. DEPARTMENT OF LICENSING AND REGULATION

Sec. 1. DEFINITIONS. In this article:

(1) "Commission" means the Texas Commission of Licensing and Regulation.

(2) "Commissioner" means the commissioner of licensing and regulation.

(3) "Department" means the Texas Department of Licensing and Regulation.

Sec. 2. DEPARTMENT; STRUCTURE. (a) The Texas Department of Licensing and Regulation is the primary state agency responsible for oversight of businesses, industries, general trades, and occupations regulated by this state as assigned to the department by the legislature.

(b) The department is governed by the Texas Commission of

1 Licensing and Regulation and the commissioner of licensing and  
2 regulation.

3 Sec. 3. COMMISSION. (a) The commission is composed of six  
4 members appointed by the governor with the advice and consent of  
5 the senate.

6 (b) Appointments to the commission shall be made without  
7 regard to the race, color, handicap, sex, religion, age, or  
8 national origin of the appointees.

9 (c) A member of the commission is not liable in a civil  
10 action for any act performed in good faith in the execution of  
11 duties as a commission member.

12 (d) The commission is subject to the open meetings law,  
13 Chapter 271, Acts of the 60th Legislature, Regular Session, 1967  
14 (Article 6252-17, Vernon's Texas Civil Statutes), and the  
15 Administrative Procedure and Texas Register Act (Article 6252-13a,  
16 Vernon's Texas Civil Statutes).

17 Sec. 4. APPLICATION OF SUNSET ACT. The commission and the  
18 department are subject to the Texas Sunset Act (Chapter 325,  
19 Government Code). Unless continued in existence as provided by  
20 that Act, the commission and the department are abolished September  
21 1, 2001.

22 Sec. 5. PUBLIC MEMBERSHIP. All members of the commission  
23 must be representatives of the general public. A person is not  
24 eligible for appointment as a member of the commission if the  
25 person or the person's spouse:

26 (1) is registered, certified, or licensed by the  
27 department;

1           (2) is employed by or participates in the management  
2 of a business entity or other organization regulated by the  
3 department or receiving funds from the department;

4           (3) owns or controls, directly or indirectly, more  
5 than a 10 percent interest in a business entity or other  
6 organization regulated by the department or receiving funds from  
7 the department; or

8           (4) uses or receives a substantial amount of tangible  
9 goods, services, or funds from the department, other than  
10 compensation or reimbursement authorized by law for commission  
11 membership, attendance, or expenses.

12       Sec. 6. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) An  
13 officer, employee, or paid consultant of a Texas trade association  
14 in a field regulated by the department may not be a member of the  
15 commission or an employee of the department who is exempt from the  
16 state's position classification plan or is compensated at or above  
17 the amount prescribed by the General Appropriations Act for step 1,  
18 salary group 17, of the position classification salary schedule.

19       (b) A person who is the spouse of an officer, manager, or  
20 paid consultant of a Texas trade association in a field regulated  
21 by the department may not be a commission member and may not be an  
22 employee who is exempt from the state's position classification  
23 plan or is compensated at or above the amount prescribed by the  
24 General Appropriations Act for step 1, salary group 17, of the  
25 position classification salary schedule.

26       (c) A person may not serve as a member of the commission or  
27 act as the general counsel to the commission if the person is

1 required to register as a lobbyist under Chapter 305, Government  
2 Code, because of the person's activities for compensation on behalf  
3 of a profession related to the operation of the commission.

4 (d) For the purposes of this section, a Texas trade  
5 association is a nonprofit, cooperative, and voluntarily joined  
6 association of business or professional competitors in this state  
7 designed to assist its members and its industry or profession in  
8 dealing with mutual business or professional problems and in  
9 promoting their common interest.

10 Sec. 7. TERMS; VACANCY. (a) Members of the commission hold  
11 office for staggered terms of six years. Two members' terms expire  
12 February 1 of each odd-numbered year.

13 (b) If a vacancy occurs during a term, the governor shall  
14 appoint a replacement to fill the unexpired part of the term.

15 Sec. 8. OFFICERS. The commission shall elect one of its  
16 members as chairman. The chairman serves in that capacity for two  
17 years. The chairman has a vote on all matters before the  
18 commission.

19 Sec. 9. REMOVAL OF COMMISSION MEMBERS. (a) It is a ground  
20 for removal from the commission if a member:

21 (1) does not have at the time of appointment the  
22 qualifications required for appointment to the commission;

23 (2) does not maintain during service on the commission  
24 the qualifications required for appointment to the commission;

25 (3) violates a prohibition established by Section 6 of  
26 this article;

27 (4) cannot discharge the member's duties for a

1 substantial part of the term for which the member is appointed  
2 because of illness or disability; or

3 (5) is absent from more than half of the regularly  
4 scheduled commission meetings that the member is eligible to attend  
5 during a calendar year unless the absence is excused by majority  
6 vote of the commission.

7 (b) The validity of an action of the commission is not  
8 affected by the fact that it is taken when a ground for removal of  
9 a commission member exists.

10 (c) If the commissioner has knowledge that a potential  
11 ground for removal exists, the commissioner shall notify the  
12 chairman of the commission of the ground. The chairman shall then  
13 notify the governor that a potential ground for removal exists.

14 Sec. 10. COMPENSATION. A member of the commission may not  
15 receive compensation for serving on the commission. A member is  
16 entitled to reimbursement for actual and necessary expenses  
17 incurred in performing functions as a member of the commission,  
18 subject to any applicable limitation on reimbursement provided by  
19 the General Appropriations Act.

20 Sec. 11. MEETINGS. (a) The commission shall meet at least  
21 once in each quarter of the calendar year.

22 (b) The commission may meet at other times at the call of  
23 the chairman or as provided by the rules of the commission.

24 Sec. 12. GENERAL POWERS AND DUTIES OF COMMISSION. (a) The  
25 commission shall supervise the commissioner's administration of the  
26 department and shall formulate policy objectives for the  
27 department.

1       **(b) The commission shall approve the operating budget of the**  
2 **department and the department's requests for legislative**  
3 **appropriations.**

4       **(c) The commission may adopt rules as necessary for its own**  
5 **procedures.**

6       **(d) The commission shall provide to its members and**  
7 **employees, as often as necessary, information regarding their**  
8 **qualifications for office or employment under this article and**  
9 **their responsibilities under applicable laws relating to standards**  
10 **of conduct for state officers or employees.**

11       **(e) The commission shall develop and implement policies that**  
12 **clearly define the respective responsibilities of the commission,**  
13 **the commissioner, and the staff of the department.**

14       **(f) The commission shall set the fees for licenses,**  
15 **registrations, certificates, and permits issued by the**  
16 **commissioner; license, registration, certificate, and permit**  
17 **renewals and late renewals; examinations; and all other authorized**  
18 **fees for programs or activities administered by the department.**  
19 **The commission shall set the fees in amounts that are reasonable**  
20 **and necessary to cover the costs of administering those programs or**  
21 **activities.**

22       **(g) The commission may adopt a system under which licenses,**  
23 **registrations, certificates, or permits expire on various dates**  
24 **during the year and may provide for a renewal period that exceeds**  
25 **12 months. The commission shall notify a person regulated by the**  
26 **department of the impending expiration of the person's license,**  
27 **registration, certificate, or permit.**

1       (h) The commissioner shall develop cost management  
2 procedures that enable the commission to determine with reasonable  
3 accuracy the cost to the department of each program and activity  
4 for which a fee is charged.

5       (i) The commission may assess administrative penalties and  
6 issue orders relating to the imposition of those penalties as  
7 provided by Section 17 of this article.

8       Sec. 13. COMMISSIONER. (a) The commission shall appoint an  
9 executive director for the department, whose title is commissioner  
10 of licensing and regulation. The commissioner shall perform duties  
11 as assigned by the commission or specified by law.

12       (b) The commissioner serves for a term of one year expiring  
13 on March 1. A commissioner is eligible for reappointment by the  
14 commission. If a vacancy occurs during a term, the commission  
15 shall appoint a replacement to fill the unexpired part of the term.

16       (c) The commissioner is responsible for the administration  
17 and enforcement of all programs of the department. The  
18 commissioner shall issue the licenses, registrations, certificates,  
19 and permits authorized by those programs and shall prescribe any  
20 necessary forms.

21       (d) The commissioner by rule may provide for prorating the  
22 fees set by the commission for the initial issuance of a license,  
23 registration, certificate, or permit, so that a person regulated by  
24 the department pays only that portion of the applicable fee that is  
25 allocable to the number of months during which the license,  
26 registration, certificate, or permit is valid.

27       (e) The commissioner shall file annually with the governor

1 and the presiding officer of each house of the legislature a  
2 complete and detailed written report accounting for all funds  
3 received and disbursed by the commission during the preceding  
4 fiscal year. The annual report must be in the form and reported in  
5 the time provided by the General Appropriations Act.

6 Sec. 14. RULES. (a) The commissioner shall adopt rules as  
7 necessary to implement this article and other laws establishing  
8 programs regulated by the department. Rules adopted by the  
9 commissioner are subject to the Administrative Procedure and Texas  
10 Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

11 (b) The commissioner may not adopt rules restricting  
12 competitive bidding or advertising by a person regulated by the  
13 department except to prohibit false, misleading, or deceptive  
14 practices by that person.

15 (c) The commissioner may not include in the rules to  
16 prohibit false, misleading, or deceptive practices by a person  
17 regulated by the department a rule that:

- 18 (1) restricts the use of any advertising medium;  
19 (2) restricts the person's personal appearance or the  
20 use of the person's voice in an advertisement;  
21 (3) relates to the size or duration of an  
22 advertisement used by the person; or  
23 (4) restricts the use of a trade name in advertising  
24 by the person.

25 Sec. 15. PERSONNEL. (a) The commissioner may employ  
26 persons to perform the work of the department and may prescribe  
27 their duties and compensation, subject to commission approval of



1 the budget and in accordance with personnel policies adopted by the  
2 commission. Subject to those policies, the commissioner may remove  
3 any employee.

4 (b) The commissioner or the commissioner's designee shall  
5 develop an intra-agency career ladder program. The program shall  
6 require intra-agency postings of all nonentry level positions  
7 concurrently with any public posting.

8 (c) The commissioner or the commissioner's designee shall  
9 develop a system of annual performance evaluations. All merit pay  
10 for department employees must be based on the system established  
11 under this subsection.

12 (d) The commissioner or the commissioner's designee shall  
13 prepare and maintain a written policy statement to assure  
14 implementation of a program of equal employment opportunity under  
15 which all personnel transactions are made without regard to race,  
16 color, handicap, sex, religion, age, or national origin. The  
17 policy statement must include:

18 (1) personnel policies, including policies related to  
19 recruitment, evaluation, selection, appointment, training, and  
20 promotion of personnel;

21 (2) a comprehensive analysis of the department work  
22 force that meets federal and state guidelines;

23 (3) procedures by which a determination can be made of  
24 significant underuse in the department work force of all persons  
25 for whom federal or state guidelines encourage a more equitable  
26 balance; and

27 (4) reasonable methods to appropriately address those

1 areas of significant underuse.

2 (e) A policy statement prepared under Subsection (d) must  
3 cover an annual period, be updated at least annually, and be filed  
4 with the governor's office.

5 (f) The governor's office shall deliver a biennial report to  
6 the legislature based on the information received under Subsection  
7 (e). The report may be made separately or as a part of other  
8 biennial reports made to the legislature.

9 Sec. 16. PUBLIC INTEREST INFORMATION AND COMPLAINTS. (a)  
10 The department shall prepare information of public interest  
11 describing the functions of the commission and department and the  
12 procedures by which complaints are filed with and resolved by the  
13 commission or department. The department shall make the  
14 information available to the public and appropriate state agencies.

15 (b) The commissioner by rule shall establish methods by  
16 which consumers and service recipients are notified of the name,  
17 mailing address, and telephone number of the department for the  
18 purpose of directing complaints to the department. The department  
19 may provide for that notification:

20 (1) on each registration form, application, or written  
21 contract for services of an individual or entity regulated by the  
22 department;

23 (2) on a sign prominently displayed in the place of  
24 business of each individual or entity regulated by the department;  
25 or

26 (3) in a bill for service provided by an individual or  
27 entity regulated by the department.

1        (c) The department shall keep an information file about each  
2 complaint filed with the commission or department that the  
3 commission or department has authority to resolve. If a written  
4 complaint is filed with the commission or department that the  
5 commission or department has authority to resolve, the department,  
6 at least quarterly and until final disposition of the complaint,  
7 shall notify the parties to the complaint of the status of the  
8 complaint unless the notice would jeopardize an undercover  
9 investigation.

10       (d) The commission shall develop and implement policies that  
11 provide the public with a reasonable opportunity to appear before  
12 the commission and to speak on any issue under the jurisdiction of  
13 the commission.

14       (e) The commission shall prepare and maintain a written plan  
15 that describes how a person who does not speak English or who has a  
16 physical, mental, or developmental disability may be provided  
17 reasonable access to the commission's programs.

18       Sec. 17. SANCTIONS; ADMINISTRATIVE PENALTY. (a) The  
19 commissioner shall adopt rules relating to the administrative  
20 sanctions that may be enforced against a person regulated by the  
21 department. If the person violates a law establishing a regulatory  
22 program administered by the department or a rule or order adopted  
23 or issued by the commissioner relating to the program, the  
24 commissioner may:

25               (1) issue a written reprimand to the person that  
26 specifies the violation;

27               (2) revoke or suspend the person's license,

1 registration, certificate, or permit; or

2 (3) place on probation a person whose license,  
3 registration, certificate, or permit has been suspended.

4 (b) In addition to a sanction imposed under Subsection (a)  
5 of this section, the commission may assess an administrative  
6 penalty in an amount not to exceed \$1,000 for each violation.

7 (c) If a suspension is probated, the commissioner may  
8 require the person to:

9 (1) report regularly to the commissioner on matters  
10 that are the basis of the probation;

11 (2) limit practice to the areas prescribed by the  
12 commissioner; or

13 (3) continue or renew professional education until the  
14 person attains a degree of skill satisfactory to the commissioner  
15 in those areas that are the basis for the probation.

16 (d) If the commissioner proposes to suspend or revoke a  
17 license, registration, certificate, or permit, or the commission  
18 proposes to assess an administrative penalty against a person  
19 regulated by the department, the person is entitled to a hearing  
20 before the commissioner or a hearings officer appointed by the  
21 commissioner. The commissioner by rule shall prescribe the  
22 procedures by which a decision to suspend or revoke a license,  
23 registration, certificate, or permit, or to assess an  
24 administrative penalty, are made and are appealable. Proceedings  
25 conducted under this section are subject to the hearings  
26 requirements and contested case provisions of the Administrative  
27 Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas

1 Civil Statutes).

2 (e) In determining the amount of an administrative penalty  
3 assessed under this section, the commission shall consider:

- 4 (1) the seriousness of the violation;  
5 (2) the history of previous violations;  
6 (3) the amount necessary to deter future violations;  
7 (4) efforts made to correct the violation; and  
8 (5) any other matters that justice may require.

9 (f) If, after investigation of a possible violation and the  
10 facts surrounding that possible violation, the commissioner  
11 determines that a violation has occurred, the commissioner shall  
12 issue a preliminary report stating the facts on which the  
13 conclusion that a violation occurred is based, recommending that an  
14 administrative penalty under this section be imposed on the person  
15 charged, and recommending the amount of that proposed penalty. The  
16 commissioner shall base the recommended amount of the proposed  
17 penalty on the seriousness of the violation determined by  
18 consideration of the factors set forth in Subsection (e) of this  
19 section.

20 (g) Not later than the 14th day after the date on which the  
21 preliminary report is issued, the commissioner shall give written  
22 notice of the violation to the person charged. The notice shall  
23 include:

- 24 (1) a brief summary of the charges;  
25 (2) a statement of the amount of the penalty  
26 recommended; and  
27 (3) a statement of the right of the person charged to

1 a hearing on the occurrence of the violation, the amount of the  
2 penalty, or both the occurrence of the violation and the amount of  
3 the penalty.

4 (h) Not later than the 20th day after the date on which the  
5 notice is received, the person charged may accept the determination  
6 of the commissioner made under Subsection (f), including the  
7 recommended penalty, or make a written request for a hearing on  
8 that determination.

9 (i) If the person charged with the violation accepts the  
10 determination of the commissioner, the commission shall issue an  
11 order approving the determination and ordering that the person pay  
12 the recommended penalty.

13 (j) If the person charged fails to respond in a timely  
14 manner to the notice or if the person requests a hearing, the  
15 commissioner shall set a hearing, give written notice of the  
16 hearing to the person, and designate a hearings examiner to conduct  
17 the hearing. The hearings examiner shall make findings of fact and  
18 conclusions of law and shall promptly issue to the commission a  
19 proposal for decision as to the occurrence of the violation and a  
20 recommendation as to the amount of the proposed penalty if a  
21 penalty is determined to be warranted. Based on the findings of  
22 fact and conclusions of law and the recommendations of the hearings  
23 examiner, the commission by order may find that a violation has  
24 occurred and may assess a penalty, or may find that no violation  
25 has occurred. All proceedings under this subsection are subject to  
26 the Administrative Procedure and Texas Register Act (Article  
27 6252-13a, Vernon's Texas Civil Statutes).

1       (k) The commissioner shall give notice of the commission's  
2 order to the person charged. The notice must include:

3               (1) separate statements of the findings of fact and  
4 conclusions of law;

5               (2) the amount of any penalty assessed;

6               (3) a statement of the right of the person charged to  
7 judicial review of the commission's order; and

8               (4) any other information required by law.

9       (l) Not later than the 30th day after the date on which the  
10 decision is final as provided by Section 16(c), Administrative  
11 Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas  
12 Civil Statutes), the person charged shall:

13               (1) pay the penalty in full; or

14               (2) if the person files a petition for judicial review  
15 contesting the fact of the violation, the amount of the penalty, or  
16 both the fact of the violation and the amount of the penalty:

17                       (A) forward the amount assessed to the  
18 department for deposit in an escrow account; or

19                       (B) in lieu of payment into escrow, post with  
20 the department a supersedeas bond for the amount of the penalty, in  
21 a form approved by the commissioner and effective until judicial  
22 review of the decision is final.

23       (m) A person charged with a penalty who is financially  
24 unable to comply with Subsection (1)(2) of this section is entitled  
25 to judicial review if the person files with the commissioner, not  
26 later than the 30th day after the date on which the order is final,  
27 the person's statement that the person is unable to meet the

1 requirements of that subsection.

2 (n) Except as provided by Subsection (m) of this section,  
3 failure to forward the amount assessed or post the bond with the  
4 department in the manner and within the period prescribed by  
5 Subsection (1) of this section results in a waiver of legal rights  
6 to judicial review. If the person charged fails to forward the  
7 amount assessed or post the bond as required by Subsection (1) of  
8 this section, the department may forward the matter to the attorney  
9 general for enforcement.

10 (o) Judicial review of the order of the commission assessing  
11 the penalty is subject to the substantial evidence rule and shall  
12 be instituted by filing a petition with a Travis County district  
13 court, as provided by Section 19, Administrative Procedure and  
14 Texas Register Act (Article 6252-13a, Vernon's Texas Civil  
15 Statutes).

16 (p) If the penalty is reduced or not assessed, the  
17 commissioner shall remit to the person charged the appropriate  
18 amount, plus accrued interest if the penalty has been paid, or  
19 shall execute a release of the bond if a supersedeas bond has been  
20 posted. The accrued interest on amounts remitted by the  
21 commissioner under this subsection shall be paid at a rate equal to  
22 the rate charged on loans to depository institutions by the New  
23 York Federal Reserve Bank, and shall be paid for the period  
24 beginning on the date that the assessed penalty is paid to the  
25 commissioner and ending on the date the penalty is remitted.

26 (q) A penalty collected under this section shall be  
27 deposited in the state treasury to the credit of the general



1 revenue fund.

2 Sec. 18. INJUNCTIVE RELIEF. (a) If it appears that a  
3 person is in violation of, or is threatening to violate, a law  
4 establishing a regulatory program administered by the department or  
5 a rule or order of the commissioner related to such a program, the  
6 attorney general or the commissioner may institute an action for  
7 injunctive relief to restrain the person from continuing the  
8 violation.

9 (b) A civil action filed under this section shall be filed  
10 in a district court in Travis County.

11 (c) The attorney general and the department may recover  
12 reasonable expenses incurred in obtaining injunctive relief under  
13 this section, including court costs, reasonable attorney's fees,  
14 witness fees, and deposition expenses.

15 ARTICLE 2. DEPARTMENT REGULATORY PROGRAMS

16 SECTION 2.01. Section 1(12), Chapter 263, Acts of the 66th  
17 Legislature, Regular Session, 1979 (Article 5221a-7, Vernon's Texas  
18 Civil Statutes), is amended to read as follows:

19 (12) "Commissioner" means the commissioner of  
20 licensing and regulation [labor-and-standards].

21 SECTION 2.02. Section 2(a), Chapter 263, Acts of the 66th  
22 Legislature, Regular Session, 1979 (Article 5221a-7, Vernon's Texas  
23 Civil Statutes), is amended to read as follows:

24 (a) This Act does not apply to:

25 (1) [~~a-person-regulated-by-Chapter-234,--Acts--of--the~~  
26 ~~51st--Legislature,--Regular--Session,--1949,--as--amended--(Article~~  
27 ~~5221a-5,--Vernon's-Texas-Civil-Statutes);~~

1           [(2)] a personnel service operated by this state, the  
2 United States government, or any municipal government of this  
3 state;

4           (2) [(3)] a personnel service operated without  
5 assessment of a fee by a person in conjunction with the person's  
6 own business for the exclusive purpose of employing help for use in  
7 that business;

8           (3) [(4)] a labor union; or

9           (4) [(5)] a professional counselor licensed under the  
10 Licensed Professional Counselor Act (Article 4512g, Vernon's Texas  
11 Civil Statutes).

12           SECTION 2.03. Sections 7(b), (d), and (e), Chapter 263, Acts  
13 of the 66th Legislature, Regular Session, 1979 (Article 5221a-7,  
14 Vernon's Texas Civil Statutes), are amended to read as follows:

15           (b) The notice shall be accepted by the commissioner, and on  
16 payment of a filing fee, the commissioner shall issue to the owner  
17 a certificate of authority to do business as a personnel service in  
18 this state not later than the 15th day after the day of the filing.  
19 [~~The-commissioner-shall-set-the-filing-fee-at--an--amount--that--is~~  
20 ~~reasonable--and--adequate--to--pay--administrative--and-enforcement~~  
21 ~~costs,-not-to-exceed-\$100-]~~

22           (d) The certificate of authority shall be valid for the [a]  
23 period set by the commission [~~of-one-year-from-the-date-of-its~~  
24 ~~issuance~~]. It shall be displayed in a prominent place in the  
25 principal location of the personnel service.

26           (e) Renewals of the certificate of authority shall be issued  
27 by the commissioner on the filing by an owner of a notice

1 containing the same information specified in Subsection (a) of this  
2 section and on the receipt by the commissioner of the renewal [a  
3 filing] fee. [~~The--commissioner--shall--set--the--filing--fee--at--an~~  
4 ~~amount--that--is--reasonable--and--adequate--to--pay--administrative--costs,~~  
5 ~~not--to--exceed--\$100.~~]

6 SECTION 2.04. Chapter 263, Acts of the 66th Legislature,  
7 Regular Session, 1979 (Article 5221a-7, Vernon's Texas Civil  
8 Statutes), is amended by adding Section 7A to read as follows:

9 Sec. 7A. CONTINUING EDUCATION. The commissioner may  
10 recognize, prepare, or administer continuing education programs for  
11 persons regulated under this Act. Participation in the programs is  
12 voluntary.

13 SECTION 2.05. Sections 1(3) and (4), Chapter 222, Acts of  
14 the 70th Legislature, Regular Session, 1987 (Article 5221a-8,  
15 Vernon's Texas Civil Statutes), are amended to read as follows:

16 (3) "Commissioner" means the commissioner of licensing  
17 and regulation [~~the-Texas-Department-of-Labor-and-Standards~~].

18 (4) "Department" means the Texas Department of  
19 Licensing and Regulation [~~Labor-and-Standards~~].

20 SECTION 2.06. Section 3(e), Chapter 222, Acts of the 70th  
21 Legislature, Regular Session, 1987 (Article 5221a-8, Vernon's Texas  
22 Civil Statutes), is amended to read as follows:

23 (e) A certificate of authority is valid for the period set  
24 by the commission [~~one-year-from-the-date-of-issuance--and--may--be~~  
25 ~~renewed--by--filing--a--notice--containing--the--information--required~~  
26 ~~under-Subsection-(a)-of-this-section--accompanied--by--the--renewal~~  
27 ~~fee--set--by--the--commissioner~~]. The owner shall display the

1 certificate in a prominent place in the principal location of the  
2 career counseling service.

3 SECTION 2.07. Chapter 222, Acts of the 70th Legislature,  
4 Regular Session, 1987 (Article 5221a-8, Vernon's Texas Civil  
5 Statutes), is amended by adding Section 9A to read as follows:

6 Sec. 9A. CONTINUING EDUCATION. The commissioner may  
7 recognize, prepare, or administer continuing education programs for  
8 persons regulated under this Act. Participation in the programs is  
9 voluntary.

10 SECTION 2.08. Section 1, Chapter 436, Acts of the 45th  
11 Legislature, Regular Session, 1937 (Article 5221c, Vernon's Texas  
12 Civil Statutes), is amended by amending Subdivisions (10), (40),  
13 and (43), and by adding Subdivision (46) to read as follows:

14 (10) "Commissioner"--The Commissioner of licensing and  
15 regulation [~~the--Department-of-Labor-and-Standards-of-the-State-of~~  
16 ~~Texas~~].

17 (40) "Safety Appliance"--Safety devices such as safety  
18 valves or safety relief valves (within the jurisdictional limits of  
19 the boiler as prescribed by the Commissioner [~~ASME--Code--and--the~~  
20 ~~Rules-and-Regulations~~]) provided for the purpose of diminishing the  
21 danger of accidents.

22 (43) "Standard Boiler"--A boiler which bears a Texas  
23 stamp, the [ASME] stamp of a nationally recognized engineering  
24 professional society, such as the American Society of Mechanical  
25 Engineers, or the stamp of any jurisdiction which has adopted a  
26 standard of construction equivalent to that required by the  
27 Commissioner.

1                   (46) "Department" means the Texas Department of  
2   Licensing and Regulation.

3           SECTION 2.09. Section 2, Chapter 436, Acts of the 45th  
4   Legislature, Regular Session, 1937 (Article 5221c, Vernon's Texas  
5   Civil Statutes), is amended to read as follows:

6           Sec. 2. (a) Unless otherwise specifically exempted in this  
7   Act, all boilers operated within the State shall be registered with  
8   the department [~~Department-of-Labor-and-Standards~~]. In addition,  
9   such boilers shall not be operated unless they have satisfactorily  
10   passed a Certificate Inspection and have qualified for a  
11   Certificate of Operation. The Certificate of Operation shall  
12   remain in full force and effect until expiration unless cancelled  
13   for cause by the Commissioner and shall be placed under glass in a  
14   conspicuous place on or near the boiler for which it is issued. No  
15   prosecution shall be maintained where the issuance of or the  
16   renewal of such Certificate of Operation shall have been requested  
17   and shall remain unacted upon. However, if the operation of such  
18   boiler without a Certificate of Operation shall constitute a  
19   serious menace to the life and safety of any person or persons in  
20   or about the premises, the Commissioner, as hereinafter provided  
21   for, shall apply to the District Court in a suit brought by either  
22   the Attorney General of the State, or any District or County  
23   Attorney, in the county in which such boiler is located or in  
24   Travis County, for an injunction restraining the operation of said  
25   boiler until the unsafe condition restraining its use shall be  
26   corrected and a Certificate of Operation issued. In all such cases  
27   it shall not be necessary for the attorney bringing the suit to

1 verify the pleadings or for the State to execute a bond as a  
2 condition precedent to the issuing of any injunction or restraining  
3 order hereunder. The affidavit of the Commissioner that no  
4 application for or no Certificate of Operation exists for such  
5 boiler, and the affidavit of the Chief Inspector or any Deputy  
6 Inspector that its operation constitutes a menace to the life and  
7 safety of any person or persons in or about the premises, shall be  
8 sufficient proof to warrant the immediate granting of a temporary  
9 restraining order. The Commissioner may revoke any Certificate of  
10 Operation issued for a boiler within this State after good cause is  
11 shown and after notice and opportunity for a hearing on the  
12 revocation.

13 (b) The Commissioner shall enter interagency agreements with  
14 the Texas Department of Health and the State Board of Insurance  
15 under which inspectors from those agencies who discover unsafe or  
16 unregistered boilers in the course and scope of inspections  
17 conducted as part of regulatory or safety programs administered by  
18 those agencies are required to report the unsafe or unregistered  
19 boilers to the Commissioner. The Commissioner may enter analogous  
20 agreements with local fire marshals. The Commissioner shall adopt  
21 rules relating to the terms and conditions of an interagency  
22 agreement entered under this subsection.

23 SECTION 2.10. Section 2a, Chapter 436, Acts of the 45th  
24 Legislature, Regular Session, 1937 (Article 5221c, Vernon's Texas  
25 Civil Statutes), is amended to read as follows:

26 Sec. 2a. (a) There is established within the department  
27 [~~Department-of-Labor--and--Standards~~] a Board of Boiler Rules,

1 consisting of nine members appointed by the Commissioner. Except  
2 for the initial appointees, members hold office for terms of six  
3 years expiring on January 31 of odd-numbered years. [~~in-making-the~~  
4 ~~initial--appointments,--the--Commissioner-shall-designate-three-for~~  
5 ~~terms-expiring-in-1979,--three-for-terms-expiring-in-1981,--and-three~~  
6 ~~for-terms-expiring-in-1983.~~]

7 (b) The Commissioner may remove any member of the Board for  
8 inefficiency or neglect of duty in office. Upon the resignation,  
9 death, suspension, or incapacity of any member, the Commissioner  
10 shall fill the vacancy for the remainder of the vacated term with  
11 an individual representative of the same interests with which the  
12 predecessor was identified.

13 (c) The nine members shall have experience with boilers, and  
14 at least four, when available, shall be registered professional  
15 engineers licensed in the State of Texas. Three members shall be  
16 representatives of owners or users of boilers, one shall be  
17 representative of boiler manufacturers or installers, three shall  
18 be representatives of companies insuring boilers in this State, one  
19 shall be a mechanical engineer on the faculty of a recognized  
20 engineering college within the State, and one shall be a  
21 representative of a labor union.

22 (d) The Chief Inspector shall serve as chairman, and the  
23 Commissioner shall be an ex officio member. At the call of the  
24 chairman, the Board shall meet at least twice each year at a place  
25 designated by the Board. No decision of the Board shall be  
26 effective unless supported by the vote of at least five members.

27 (e) The Board shall act in an advisory capacity to [~~of~~] the

1 Commissioner in formulating definitions, rules and regulations for  
2 the safe construction, installation, inspection, operating limits,  
3 alteration, and repair of boilers and their appurtenances.

4 (f) The Board members shall serve without salary, but are  
5 entitled to reimbursement for actual expenses incurred in the  
6 performance of their duties as board members.

7 SECTION 2.11. Chapter 436, Acts of the 45th Legislature,  
8 Regular Session, 1937 (Article 5221c, Vernon's Texas Civil  
9 Statutes), is amended by adding Sections 10a and 10b to read as  
10 follows:

11 Sec. 10a. (a) Not later than the 30th day after the date on  
12 which an examination is administered to an applicant for a  
13 commission as an inspector of boilers, the Commissioner shall  
14 notify each examinee of the results of the examination. However,  
15 if an examination is graded or reviewed by a national testing  
16 service, the Commissioner shall notify examinees of the results of  
17 the examination not later than the 14th day after the date on which  
18 the Commissioner receives the results from the testing service. If  
19 the notice of examination results graded or reviewed by a national  
20 testing service will be delayed for longer than 90 days after the  
21 examination date, the Commissioner shall notify the examinee of the  
22 reason for the delay before the 90th day.

23 (b) If requested in writing by a person who fails the  
24 examination, the Commissioner shall furnish the person with an  
25 analysis of the person's performance on the examination.

26 Sec. 10b. The Commissioner may recognize, prepare, or  
27 administer continuing education programs for authorized inspectors.



1 Participation in the programs is voluntary.

2 SECTION 2.12. Section 12, Chapter 436, Acts of the 45th  
3 Legislature, Regular Session, 1937 (Article 5221c, Vernon's Texas  
4 Civil Statutes), is amended to read as follows:

5 Sec. 12. (a) Any person, firm, corporation, or agent  
6 thereof, owning or having the custody, management, use or operation  
7 of any boiler in this State, who shall violate any provision of  
8 this Act, or who violates any rule, regulation or order promulgated  
9 by authority hereof by the Commissioner or any regularly employed  
10 inspector authorized to enforce any provision or any rule,  
11 regulation or order authorized herein, or any person, firm,  
12 corporation, or agent thereof coming within any provision of this  
13 Act, or any rule, regulation or order authorized herein, who shall  
14 fail or refuse to comply therewith commits an offense.

15 (b) An offense under this section is a Class B  
16 misdemeanor. [~~---shall---be---deemed---guilty-of-a-misdemeanor-and-upon~~  
17 ~~conviction-therefor-shall-be-subject-to-a-fine--of--not--less--than~~  
18 ~~Fifty-Dollars-(\$50)-nor-more-than-Two-Hundred-Dollars-(\$200)-,or-by~~  
19 ~~imprisonment--in--the-county-jail-not-to-exceed-sixty-(60)-days,-or~~  
20 ~~by-beth-such-fine-and-imprisonment.~~ ]

21 SECTION 2.13. Section 3, Texas Manufactured Housing  
22 Standards Act (Article 5221f, Vernon's Texas Civil Statutes), is  
23 amended to read as follows:

24 Sec. 3. DEFINITIONS. Whenever used in this Act, unless the  
25 context otherwise requires, the following words and terms have the  
26 following meanings:

27 (1) [(a)] "Mobile home" means a structure that was

1 constructed before June 15, 1976, transportable in one or more  
2 sections, which, in the traveling mode, is eight body feet or more  
3 in width or 40 body feet or more in length, or, when erected on  
4 site, is 320 or more square feet, and which is built on a permanent  
5 chassis and designed to be used as a dwelling with or without a  
6 permanent foundation when connected to the required utilities, and  
7 includes the plumbing, heating, air-conditioning, and electrical  
8 systems.

9           (2) [(b)] "Retailer" means any person engaged in the  
10 business of buying for resale, selling, or exchanging new  
11 manufactured homes or offering such for sale, exchange, or  
12 lease-purchase to consumers. [~~No--person--shall--be--considered--a~~  
13 ~~retailer-unless-engaged-in-the-sale,-exchange,-or-lease-purchase-of~~  
14 ~~two--or--more--manufactured--homes--to-consumers-in-any-consecutive~~  
15 ~~12-month-period-~~]

16           (3) [(e)] "Manufacturer" means any person who  
17 constructs or assembles manufactured housing for sale, exchange, or  
18 lease-purchase within the state.

19           (4) [(d)] "Department" means the Texas Department of  
20 Licensing and Regulation [~~Labor-and-Standards~~].

21           (5) [(e)] "Person" means an individual, partnership,  
22 company, corporation, association, or other group, however  
23 organized.

24           [~~(f)--"Broker"--means-a-person-engaged-by-one--or--more--other~~  
25 ~~persons--to--negotiate--or-offer-to-negotiate-bargains-or-contracts~~  
26 ~~for-the-sale,-exchange,-or-lease-purchase-of-a-manufactured-home-to~~  
27 ~~which-a-certificate-or-document-of-title-has--been--issued--and--is~~

1 outstanding. ---A--broker--may--or--may-not-be-an-agent-of-any-party  
2 involved-in-the-transaction. --A-person-who-maintains-a-location-for  
3 the-display-of--manufactured--homes--is--not--a--broker--but--is--a  
4 retailer. ---The--term--shall--not-apply-if-the-manufactured-home-is  
5 affixed-to-a-permanent-foundation,--the--manufacturer's--certificate  
6 or--the--document--of-title-is-canceled,--and-the-home-is-offered-as  
7 real-estate,--however,--the-provisions-of-The-Real-Estate-License-Act  
8 (Article-6573a,--Vernon's-Texas-Civil-Statutes)--shall-apply. ]

9 (6) [(g)] "Consumer" means any person other than one  
10 registered under this article who seeks or acquires by purchase,  
11 exchange, or lease-purchase a manufactured home.

12 (7) [(i)] "Seal" means a device or insignia issued by  
13 the commissioner [department] to be affixed to used mobile homes  
14 for titling purposes, as required by the commissioner [to--indicate  
15 compliance--with--the-standards,--rules,--and-regulations-established  
16 by-the-department]. The seal shall remain the property of the  
17 department.

18 (8) [(j)] "Label" means a device or insignia issued by  
19 the commissioner [department] to indicate compliance with the  
20 standards, rules, and regulations established by the Department of  
21 Housing and Urban Development, and is permanently affixed to each  
22 transportable section of each HUD-code manufactured home  
23 constructed after June 15, 1976, for sale to a consumer.

24 (9) [(k)] "Installation," when used in reference to  
25 manufactured housing, means the transporting of manufactured homes  
26 or manufactured home components to the place where they will be  
27 used by the consumer, the construction of the foundation system,

1 whether temporary or permanent, and the placement and erection of a  
2 manufactured home or manufactured home components on the foundation  
3 system, and includes supporting, blocking, leveling, securing,  
4 anchoring, and proper connection of multiple or expandable sections  
5 or components, the installation of air conditioning, and minor  
6 adjustments.

7           (10) [~~11~~] "Installer" means any person, including a  
8 retailer or manufacturer, who performs installation functions on  
9 manufactured housing.

10           (11) [~~12~~] "Alteration" means the replacement,  
11 addition, and modification, or removal of any equipment or its  
12 installation after sale by a manufacturer to a retailer but prior  
13 to sale and installation by a retailer to a purchaser which may  
14 affect the construction, fire safety, occupancy, plumbing,  
15 heat-producing or electrical system. It includes any modification  
16 made in a new [~~the~~] manufactured home which may affect the  
17 compliance of the home with the standards, but it does not include  
18 the repair or replacement of a component or appliance requiring  
19 plug-in to an electrical receptacle where the replaced item is of  
20 the same configuration and rating as the one being replaced. It  
21 also does not include, the addition of an appliance requiring  
22 "plug-in" to an electrical receptacle, which appliance was not  
23 provided with the manufactured home by the manufacturer, if the  
24 rating of the appliance does not exceed the rating of the  
25 receptacle to which it is connected.

26           (12) [~~13~~] "Lease-purchase" means to enter into a  
27 lease contract with a provision conferring on the lessee an option

1 to purchase a new [~~the~~] manufactured home.

2 (13) [~~e~~] "Commissioner" means the commissioner of  
3 licensing and regulation [~~Commissioner-of-the-Texas-Department-of~~  
4 ~~Labor-and-Standards~~].

5 (14) [~~p~~] "Code" means the Texas Manufactured Housing  
6 Standards Code.

7 (15) [~~r~~] "Salesperson" means any person who for any  
8 form of compensation sells or lease-purchases or offers to sell or  
9 lease-purchase new manufactured housing to consumers as an employee  
10 or agent of a retailer [~~er-broker~~].

11 (16) [~~s~~] "Manufactured housing" or "manufactured  
12 home" means a HUD-code manufactured home or a mobile home and  
13 collectively means and refers to both.

14 (17) [~~t~~] "Registrant" means any person who has  
15 registered with the department and has been issued a certificate of  
16 registration as a manufactured housing manufacturer, retailer,  
17 [~~broker~~], salesperson, [~~reeyer~~] or installer.

18 (18) [~~u~~] "HUD-code manufactured home" means a  
19 structure, constructed on or after June 15, 1976, according to the  
20 rules of the United States Department of Housing and Urban  
21 Development, transportable in one or more sections, which, in the  
22 traveling mode, is eight body feet or more in width or 40 body feet  
23 or more in length, or, when erected on site, is 320 or more square  
24 feet, and which is built on a permanent chassis and designed to be  
25 used as a dwelling with or without a permanent foundation when  
26 connected to the required utilities, and includes the plumbing,  
27 heating, air-conditioning, and electrical systems.

1                   (19) [({v})] "Advertising" or "advertisement" means any  
2 commercial message which promotes the sale, exchange, or  
3 lease-purchase of manufactured homes and which appears in, or is  
4 presented on, radio, television, a public-address system,  
5 newspapers, magazines, leaflets, flyers, catalogs, direct mail  
6 literature, other printed material, an inside or outside sign or  
7 window display, or in point-of-sale literature or price tags.  
8 Materials which are educational or that may be required by law do  
9 not constitute advertising. Any advertisement relating to  
10 manufactured housing shall be considered as an offer to sell,  
11 exchange, or lease-purchase to consumers.

12                   (20) "Commission" means the Texas Commission of  
13 Licensing and Regulation.

14           SECTION 2.14.       Section 4, Texas Manufactured Housing  
15 Standards Act (Article 5221f, Vernon's Texas Civil Statutes), is  
16 amended to read as follows:

17           Sec. 4. MANUFACTURED HOUSING STANDARDS.       (a) The  
18 commissioner [~~department~~] shall adopt standards and requirements  
19 for the installation and for the construction of manufactured  
20 housing, that are reasonably necessary in order to protect the  
21 health, safety, and welfare of the occupants and the public. The  
22 collection of these standards and requirements is the Texas  
23 Manufactured Housing Code.

24           [({1})] The requirements and standards for the plumbing,  
25 heating, air-conditioning and electrical systems and construction  
26 of mobile homes in effect on September 1, 1979, remain in full  
27 force and effect until amended in accordance with the procedure set

1     forth in this section.

2                 [(2)] The commissioner [department] shall adopt  
3 standards and requirements for the construction of HUD-code  
4 manufactured homes in compliance with the federal standards and  
5 requirements established under Title VI of the Housing and  
6 Community Development Act of 1974, entitled the National  
7 Manufactured Home Construction and Safety Standards Act of 1974.

8                 (b) The commissioner [department] shall adopt standards and  
9 requirements for the installation of all manufactured housing in  
10 the state that are necessary for the protection of the health,  
11 safety, and welfare of all the citizens. The standards must assure  
12 that manufactured housing in the first two tiers of coastal  
13 counties in the state is capable of withstanding winds of  
14 hurricane-force velocity of not less than 105 miles per hour and  
15 that manufactured housing in all other counties of the state is  
16 capable of withstanding winds of a minimum gale-force velocity.

17                [(1)] The requirements and standards for the  
18 installation of mobile homes as adopted by the department in  
19 existence on August 31, 1979, remain in force until amended in  
20 accordance with the procedure set forth in this section.

21                [(2)] All manufactured housing must be installed in  
22 compliance with the standards, rules, regulations, or  
23 administrative orders of the commissioner [department].

24                (c) A political subdivision of this state, without the  
25 express approval of the commissioner [department] following a  
26 hearing on the matter, may not adopt different standards from those  
27 promulgated by the commissioner [department] for the construction

1 or installation of manufactured housing within the political  
2 subdivision.

3 (d) Before the adoption or promulgation of any standards or  
4 requirements authorized by this section, any change in or addition  
5 to the standards authorized in this section, or the approval of  
6 different standards by any political subdivision, the commissioner  
7 [~~department~~] shall publish a notice and conduct a public hearing in  
8 accordance with the Administrative Procedure and Texas Register  
9 Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes),  
10 not sooner than the 30th day following the publication of notice.

11 (e) Every requirement or standard or modification,  
12 amendment, or repeal of a requirement or standard adopted by the  
13 commissioner [~~department~~] shall state the date it shall take  
14 effect.

15 (f) The department shall cooperate with all units of local  
16 government in this state and shall authorize local units of  
17 government, on request, to make and perform inspection and  
18 enforcement activities related to the construction of foundation  
19 systems and the erection and installation of manufactured housing  
20 at the homesite pursuant to contracts or other official  
21 designations and the rules and regulations of the commissioner  
22 [~~department~~]. The department shall notify each local governmental  
23 unit biennially in writing to advise the local governmental unit of  
24 the program for contracting installation inspections. The  
25 department shall encourage local building inspection officials to  
26 perform enforcement and inspection activities for manufactured  
27 housing installed within the local governmental unit and may



1 establish cooperative inspection training programs. The department  
2 may withdraw the authorization if the local governmental unit fails  
3 to follow the rules, regulations, interpretations, and written  
4 instructions of the department.

5 SECTION 2.15. Sections 6(c), (d), (f), (g), (i), and (j),  
6 Texas Manufactured Housing Standards Act (Article 5221f, Vernon's  
7 Texas Civil Statutes), are amended to read as follows:

8 (c) Before the sale of a new manufactured home to a consumer  
9 and before its installation, it is unlawful for any manufacturer,  
10 retailer, [~~broker~~7] or installer to make any alteration on a new  
11 manufactured home to which a label has been affixed or cause such  
12 an alteration to be made, unless prior written approval has been  
13 obtained from the department. It is unlawful for any manufacturer,  
14 retailer, [~~broker~~7] installer, or lienholder to make any  
15 alteration, repair, or replacement of any component or systems in  
16 and to a used manufactured home which will result in making the  
17 home not habitable.

18 (d) It is unlawful for any retailer[7---~~broker~~7] or  
19 salesperson to sell, exchange, or lease-purchase or offer to sell,  
20 exchange, or lease-purchase any new manufactured home to a consumer  
21 in the state for use as a residence or dwelling, unless the  
22 manufactured home has affixed to it the appropriate seal or label.

23 (f) A person may not make any announcement concerning the  
24 sale, exchange, or lease-purchase of, nor offer to sell, exchange,  
25 or lease-purchase, a new manufactured home to consumers in this  
26 state through any form of advertising unless such person is a duly  
27 registered manufacturer or[7] retailer[7--~~er~~---~~broker~~]. [This

1 prohibition-against-advertising-shall-not-apply-to-a-person-to-whom  
2 a--certificate--or--document--of-title-has-been-issued-showing-such  
3 person-to-be-the-owner-of-the-home,-provided-that-such-person--does  
4 not--offer--to--sell,-exchange,-or--lease-purchase--two--or--more  
5 manufactured--homes--in--any--consecutive--12-month--period- ---This  
6 prohibition--also-shall-not-apply-to-the-advertising-of-real-estate  
7 on-which-a-manufactured-home--has--been--permanently--attached--and  
8 affixed- ]

9 (g) It is unlawful for a retailer to purchase for resale to  
10 a consumer, or to sell, exchange, or lease-purchase or offer to  
11 sell, exchange, or lease-purchase, any new HUD-code manufactured  
12 home which was constructed by a manufacturer which was not  
13 registered with the commissioner [department] at the time of  
14 construction.

15 (i) It is unlawful for a retailer [~~or--broker~~] to use the  
16 phrase "no down payment" or "nothing down," or any similar phrase  
17 or term in any advertisement, without identifying in the  
18 advertisement the specific source of the funds for the loan or  
19 credit advance and setting forth the conditions of qualification of  
20 the purchaser for approval of the loan or credit advance without  
21 down payment. This prohibition shall not apply to credit  
22 transactions to be guaranteed by the Veterans Administration of the  
23 United States provided that the phrase or term includes the words  
24 "to qualified veterans."

25 (j) It is unlawful for a retailer [~~or--broker~~] to fail to  
26 comply with the requirements and provisions of the Texas Credit  
27 Code or the federal Truth-in-Lending Act or to advertise any

1 interest rate or finance charge which is not expressed as an annual  
2 percentage rate.

3 SECTION 2.16. Sections 7(a), (d), (e), (g), (i), (k), (m),  
4 (n), (o), and (p), Texas Manufactured Housing Standards Act  
5 (Article 5221f, Vernon's Texas Civil Statutes), are amended to read  
6 as follows:

7 (a) A person may not construct or assemble a new HUD-code  
8 manufactured home in the state or ship a new HUD-code manufactured  
9 home into the state, unless the person is registered as a  
10 manufactured housing manufacturer by the commissioner [department]  
11 and possesses a valid manufacturer's certificate of registration at  
12 the time the home is constructed or assembled.

13 (d) A person may not perform any installation functions on  
14 manufactured housing in the state, unless the person possesses a  
15 valid installer's certificate of registration and files proof of  
16 insurance as required by the department. The commissioner  
17 [department] may issue a temporary installer's certificate of  
18 registration to a homeowner for the installation of the owner's  
19 home in accordance with applicable requirements, standards, and  
20 regulations of the commissioner [department], on application and  
21 payment of the required fee and on submission of proof of insurance  
22 by the owner as required by the department.

23 (e) Each applicant for a certificate of registration as a  
24 manufacturer, retailer, [broker], or installer must file with the  
25 commissioner [department] an application for registration  
26 containing the following information:

27 (1) the legal name, address, and telephone number of

1 the applicant;

2 (2) the trade name by which the applicant does  
3 business and, if incorporated, the name registered with the  
4 secretary of state and the address of the business; and

5 (3) the dates on which the applicant became the owner  
6 and operator of the business.

7 (g) All certificates of registration are valid for the  
8 period set by the commission [one-year-from-the-date-of-issue] and  
9 are renewable as provided by the commission [annually-on-payment-of  
10 the-annual-fee].

11 (i) If a change occurs in the information filed with the  
12 commissioner [department] under Subsection (e) of this section, the  
13 applicant shall file an amendment to his or her application that  
14 states the correct information.

15 (k) The commissioner, after notice and hearing, may refuse  
16 to issue or may permanently revoke, or suspend for a definite  
17 period of time and for a specified geographic area or sales  
18 location, any certificate of registration if the commissioner finds  
19 that the applicant or registrant:

20 (1) knowingly and wilfully violated any provision of  
21 this article or any rule, administrative order, or regulation made  
22 pursuant to this article;

23 (2) without lawful authorization retained or converted  
24 any money, property, or any other thing of value from consumers in  
25 the form of down payments, sales and use taxes, deposits, or  
26 insurance premiums;

27 (3) failed to deliver proper title documents or

1 certificates of title to consumers;

2 (4) failed to give or breached any manufactured home  
3 warranty required by this article or by the Federal Trade  
4 Commission;

5 (5) engaged in any false, misleading, or deceptive  
6 acts or practices as the term is set forth in and as those acts are  
7 declared unlawful by the provisions of Chapter 17, Subchapter E,  
8 Business & Commerce Code;

9 (6) failed to furnish or file any reports required by  
10 the department for the administration and enforcement of this  
11 article;

12 (7) furnished false information on any application,  
13 report, or other document filed with the department;

14 (8) has a record of criminal convictions which, in the  
15 opinion of the commissioner [department], renders the applicant  
16 unfit for registration; or

17 (9) failed to file the bond or post other security for  
18 each location as required by Section 13 of this article.

19 (m) A retailer or an installer may not contract with any  
20 person for the installation of any air-conditioning equipment,  
21 devices, or components in connection with the installation of a  
22 manufactured home unless the person is registered as an installer  
23 with the commissioner [department] or is otherwise licensed by the  
24 state as an air-conditioning contractor. This subsection shall not  
25 apply to a new manufactured home being installed on a permanent  
26 foundation within a municipality which regulates air-conditioning  
27 contractors unless some other state statute provides otherwise.

1           (n) A person may not act as a salesperson of new  
2 manufactured housing unless the person is registered with the  
3 commissioner [~~department~~]. Each applicant for a certificate of  
4 registration shall file with the commissioner [~~department~~] an  
5 application giving such information as the commissioner  
6 [~~department~~] deems necessary and pay the required fee. The owner  
7 of a sole proprietorship, a partner in a partnership, or an officer  
8 of a corporation which is duly registered as a retailer [~~er-broker~~]  
9 does not have to register as a salesperson so long as such  
10 individual is properly listed in the retailer's [~~er-broker's~~]  
11 application for registration. The salesperson is the agent of the  
12 retailer [~~er---broker~~]. The registration shall be an annual  
13 registration. A retailer of new manufactured homes [~~er--broker~~]  
14 shall not employ, retain, or otherwise use the services of a  
15 salesperson who is not registered. A registered salesperson may  
16 work or sell for one or more retailers[~~7--brokers,~~] or sales  
17 locations.

18           (o) A person may not alter, repair, or otherwise rebuild a  
19 salvaged manufactured home, as such term is defined in Section 8 of  
20 this article, unless the person is duly registered with the  
21 commissioner [~~department~~] as a manufactured home rebuilder and  
22 unless the person complies with the rules and regulations of the  
23 commissioner [~~department~~] relating to the rebuilding of salvaged  
24 manufactured homes.

25           (p) Any person not registered with the commissioner  
26 [~~department~~] as of September 1, 1987, must attend and complete  
27 twenty (20) hours of instruction in the law and consumer protection

1 regulations prior to any registration. The instruction shall be  
2 given not less than one time each quarter. No test shall be made a  
3 prerequisite of registration, but actual attendance at the  
4 instruction sessions is required. The commissioner [department]  
5 shall not issue a registration until the instruction is completed.  
6 This subsection does not apply to a registrant making application  
7 to register additional business locations.

8 SECTION 2.17. The Texas Manufactured Housing Standards Act  
9 (Article 5221f, Vernon's Texas Civil Statutes) is amended by adding  
10 Section 7A to read as follows:

11 Sec. 7A. CONTINUING EDUCATION PROGRAMS. The commissioner  
12 may recognize, prepare, or administer continuing education programs  
13 for persons regulated under this Act. Participation in the  
14 programs is voluntary.

15 SECTION 2.18. Section 8, Texas Manufactured Housing  
16 Standards Act (Article 5221f, Vernon's Texas Civil Statutes), is  
17 amended to read as follows:

18 Sec. 8. SALE OF USED HOMES; DISCLOSURE STATEMENT. (a) A  
19 person may not sell, exchange, or lease-purchase or negotiate for  
20 the sale, exchange, or lease-purchase of a used manufactured home  
21 to a consumer unless the appropriate seal or label is affixed to  
22 it. If the used manufactured home does not have a seal or label,  
23 the person must apply to the department for a seal and pay the fee.

24 (b) [~~It is unlawful for a person to sell, exchange, or~~  
25 ~~lease-purchase any used manufactured home to a consumer for use as~~  
26 ~~a dwelling or residence unless the manufactured home is habitable.~~]

27 If the sale, exchange, or lease-purchase is to a purchaser for the

1 purchaser's business use, [~~the--manufactured--home--need--not--be~~  
2 ~~habitable,--however,~~] the title to the home shall be surrendered to  
3 the department for cancellation by the seller.

4 (c) [~~For purposes of all provisions of this article or other~~  
5 ~~laws of this state the term "habitable" as applied to--manufactured~~  
6 ~~housing is limited to and means that there is no defect, damage, or~~  
7 ~~deterioration--to--the--home--which--creates--a dangerous or unsafe~~  
8 ~~situation or condition, that the plumbing, heating, and--electrical~~  
9 ~~systems--are in safe working order, that the walls, floor, and roof~~  
10 ~~are free--from--any--substantial--openings--not--designed--and--are~~  
11 ~~structurally--sound, and that all exterior doors and windows are in~~  
12 ~~place.~~

13 [~~d~~] It is unlawful for a person to sell, exchange, or  
14 lease-purchase a used manufactured home to any person without the  
15 appropriate transfer of good and marketable title to the home  
16 except when the sale, exchange, or lease-purchase is (1) to a  
17 purchaser for the purchaser's business use, or (2) to a rebuilder  
18 for the purpose of rebuilding a salvaged manufactured home.

19 (d) [~~e~~] The purchaser of a used manufactured home for  
20 business use shall not sell, exchange, or lease-purchase the home  
21 for use as a dwelling or residence unless a new title to the used  
22 manufactured home is issued by the commissioner [~~department~~]. The  
23 purchaser may apply to the department for the issuance of a new  
24 title. [~~The department shall then inspect the home, and if--it--is~~  
25 ~~determined that the home is habitable, issue a new title.~~

26 [~~f~~]~~--A holder of a--lien--recorded on a manufactured home~~  
27 ~~document of title issued by the department who sells, exchanges, or~~



1 transfers-by--a--lease-purchase--a--repossessed--manufactured--home  
2 covered--by--such--document-of-title-is-not-required-to-comply-with  
3 the-provisions-of-this-article,-provided-that-the--sale,-exchange,  
4 or--transfer--by-a-lease-purchase-is-(1)-to-or-through-a-registered  
5 retailer,-or-(2)-to-a-purchaser-for-the-purchaser's--business--use.  
6 If--the-sale,-exchange,-or-lease-purchase-is-to-a-purchaser-for-the  
7 purchaser's-business-use,-the-holder-of-the--lien--shall--surrender  
8 the--title--to--the--department--for--cancellation.---If--the-sale,  
9 exchange,-or-lease-purchase-is-to-or-through-a-registered-retailer,  
10 the-retailer-is-responsible-and--liable--for--compliance--with--the  
11 provisions--of--this--article--and-all-rules-and-regulations-of-the  
12 department,-and-the-holder-of-the-lien-shall-not-be--joined--as--a  
13 party-in-any-litigation-arising-in-connection-with,-or-relating-to,  
14 the---sale,---exchange,---or---lease-purchase--of--the--repossessed  
15 manufactured-home. ]

16 (e) [(g)(1)] A "salvaged" manufactured home, for purposes of  
17 all provisions of this article, is defined as and means a  
18 manufactured home obtained by a property and casualty insurer from  
19 the insured by reason of the insurer's payment of the policy value  
20 written on the home to the insured; the reasonableness of the  
21 insurer's judgment that the costs of repair to the home would  
22 exceed the insured value of the home does not affect the status of  
23 the home as salvage.

24 [(2)] The person possessing the original document of title  
25 to a salvaged manufactured home must surrender such document of  
26 title to the commissioner [department] for cancellation of the  
27 title and issuance of a salvage title. If the manufactured home is

1 rebuilt in accordance with the provisions of this article and the  
2 rules and regulations of the commissioner [~~department~~], the  
3 commissioner [~~department~~] shall issue, upon proper application, a  
4 new original document of title in lieu of the salvage title.

5 (f) A person who sells more than one used manufactured home  
6 during a 12-month period must deliver a written disclosure  
7 statement to the buyer of each home sold. The commissioner shall  
8 prescribe the form of the disclosure statement with the assistance  
9 of the consumer protection division of the office of the attorney  
10 general. The seller shall warrant, and the disclosure statement  
11 must provide that the seller warrants, that:

12 (1) the plumbing, heating, and electrical systems of  
13 the home, and the air-conditioning system if so equipped, are in  
14 safe working order;

15 (2) the structure of the home is in good condition;  
16 and

17 (3) the home is properly equipped with smoke detectors  
18 in good operating condition.

19 (g) The disclosure statement also must provide a notice as  
20 to the status of other items or services that may be provided by  
21 the seller, including appliances, furnishings, window coverings,  
22 repair services, or decorating services. The seller shall specify  
23 in the disclosure statement which items or services are included in  
24 the sale and whether those items or services are warranted by the  
25 seller.

26 (h) The buyer and seller shall each sign the disclosure  
27 statement, a copy of which shall be filed with the application to

1     transfer title to the home.

2             SECTION 2.19. Sections 9(b), (c), (d), (e), (f), (g), (j),  
3     (k), (l), (m), (n), and (o), Texas Manufactured Housing Standards  
4     Act (Article 5221f, Vernon's Texas Civil Statutes), are amended to  
5     read as follows:

6             (b) The commissioner [~~department~~] shall adopt rules and  
7     regulations, promulgate administrative orders, and take all action  
8     necessary to assure compliance with the intent and purpose of this  
9     Act to effectuate and to provide for uniform enforcement of all  
10    provisions of this Act and of the Texas Manufactured Housing  
11    Standards Code. The commissioner [~~department~~] shall make and  
12    enforce rules and regulations reasonably required to effectuate the  
13    notification and correction procedures provided in Section 615 of  
14    the National Manufactured Home Construction and Safety Standards  
15    Act of 1974.

16            (c) The commissioner [~~department~~] shall adopt rules and  
17    regulations, promulgate administrative orders, and take all actions  
18    necessary to comply with the provisions of the National  
19    Manufactured Home Construction and Safety Standards Act of 1974 and  
20    to provide for the effective enforcement of all new HUD-code  
21    manufactured home construction and safety standards in order to  
22    have its state plan approved by the secretary of the United States  
23    Department of Housing and Urban Development.

24            (d) At least 30 days before the adoption or promulgation of  
25    any change in or addition to the rules and regulations authorized  
26    in Subsections (b) and (c) of this section, the commissioner  
27    [~~department~~] shall publish in the Texas Register a notice

1 including:

2 (1) a copy of the proposed changes and additions; and  
3 (2) the time and place that the commissioner  
4 [~~department~~] will consider any objections to the proposed changes  
5 and additions.

6 (e) After giving the notice required by Subsection (d) of  
7 this section, the commissioner [~~department~~] shall afford interested  
8 persons an opportunity to participate in the rule-making through  
9 submission of written data, views, or arguments with or without  
10 opportunity to present the same orally on any matter.

11 (f) Every rule or regulation or modification, amendment, or  
12 repeal of a rule or regulation adopted by the commissioner  
13 [~~department~~] shall state the date it shall take effect.

14 (g) Immediately after their promulgation, the commissioner  
15 [~~department~~] shall publish in the Texas Register all rules and  
16 regulations or amendments thereto.

17 (j) The commissioner [~~department~~] may employ state  
18 inspectors to carry out the functions required of the department  
19 pursuant to this Act, to effectuate the provisions of this Act, and  
20 to enforce the rules, regulations, and administrative orders  
21 promulgated pursuant to this Act. The commissioner [~~department~~]  
22 may authorize state inspectors to travel inside or outside of the  
23 state to inspect manufacturing facilities in connection with the  
24 enforcement of this Act.

25 (k) The commissioner [~~department~~] may contract with any  
26 federal agency or any agency or political subdivision of any state  
27 for the performance of any inspections or inspection programs

1 pursuant to this Act or the rules and regulations of the  
2 commissioner [department] to assure that new manufactured homes  
3 sold or installed in the state comply with the Texas Manufactured  
4 Housing Standards Code.

5 (l) The commissioner [department] may enter into contracts  
6 with the Department of Housing and Urban Development or its  
7 designees to monitor the Department of Housing and Urban  
8 Development programs.

9 (m) When necessary or required by law, the commissioner  
10 [department] may obtain inspection search warrants.

11 (n) The commissioner [department] may inspect new  
12 manufactured homes at the borders of this state and adopt rules and  
13 regulations necessary for the inspection of all new manufactured  
14 homes entering this state to assure compliance with the National  
15 Manufactured Home Construction and Safety Standards Act of 1974,  
16 the Texas Manufactured Housing Standards Code, and the rules and  
17 regulations of the commissioner [department], and to assure payment  
18 of any use tax which may be due the State of Texas.

19 (o) In order to protect the public health, safety, and  
20 welfare, and to assure the availability of low cost manufactured  
21 housing for all consumers, the commissioner [department] shall  
22 establish rules and regulations for the protection of the interests  
23 of consumers who occupy or desire to purchase manufactured housing  
24 and for the business conduct of those persons required to be  
25 registered under this Act.

26 SECTION 2.20. Sections 11(a), (b), (c), and (g), Texas  
27 Manufactured Housing Standards Act (Article 5221f, Vernon's Texas

1 Civil Statutes), are amended to read as follows:

2 (a) There shall be a fee in an amount set by the commission  
3 [~~commissioner~~] for the inspection of the installation of mobile and  
4 HUD-code manufactured homes which shall be paid by the installer of  
5 the home. Said fee shall be paid to the state and shall accompany  
6 notification to the department of the exact location of the home.  
7 The department shall make appropriate fee distributions to local  
8 governmental units performing inspections pursuant to contracts or  
9 other official designations provided that the local governmental  
10 units are not collecting a local inspection fee.

11 (b) Looking for guidance to the rules and regulations  
12 promulgated under Title VI of the Housing and Community Development  
13 Act of 1974 and to that Act itself, the commission [~~commissioner~~]  
14 shall set fees for the following functions:

15 (1) There shall be a schedule of fees for the review  
16 of HUD-code manufactured home blueprints and supporting data when  
17 the department acts as a Design Approval Primary Inspection Agency.  
18 This fee shall be paid by the manufacturer seeking approval.

19 (2) There shall be an inspection fee on all HUD-code  
20 manufactured homes manufactured or assembled within the State of  
21 Texas. This fee shall be paid by the manufacturer of the home.  
22 The manufacturer shall also be charged for the actual cost of  
23 travel for representatives of the department to and from the  
24 manufacturing facility.

25 (3) The fees in Subsections (1) and (2) shall not be  
26 applicable when an accepted inspection agency authorized by the  
27 Department of Housing and Urban Development, other than the

1 department, acts as the Design Approval Primary Inspection Agency  
2 or the In-Plant Inspection Agency.

3 (4) There shall be a fee charged on an hourly basis  
4 for inspection of alterations made upon the structure, plumbing,  
5 heating, or electrical systems of HUD-code manufactured homes.  
6 This fee shall be paid by the person making the alteration. There  
7 shall be a fee for the inspection of the rebuilding of salvaged  
8 manufactured homes which shall be paid by the rebuilder. The  
9 person making the alteration or the rebuilder shall also be charged  
10 for the actual cost of travel for representatives of the department  
11 to and from the place of inspection. [~~There shall be a fee for the~~  
12 ~~inspection--of-used-manufactured-homes-for-which-the-title-has-been~~  
13 ~~cancelled-to-determine-if-the-home-is-habitable-for-the-issuance-of~~  
14 ~~a-new-title.~~]

15 (5) There shall be a fee for the issuance of seals for  
16 used mobile or HUD-code manufactured homes.

17 (c) The commission [~~commissioner~~] shall set [~~annual~~] fees  
18 for the issuance and renewal of manufacturers', retailers',  
19 [~~brokers'-7~~] salespersons', and installers' certificates of  
20 registration; and fees for the issuance of rebuilder registrations.

21 (g) The commission [~~commissioner~~] shall set the fees imposed  
22 under this section in amounts that are reasonable and necessary to  
23 defray the costs of administering this article.

24 SECTION 2.21. Sections 13(a), (b), (e), (f), (g), (h), and  
25 (i), Texas Manufactured Housing Standards Act (Article 5221f,  
26 Vernon's Texas Civil Statutes), are amended to read as follows:

27 (a) The commissioner [~~department~~] may not issue a

1 certificate of registration, unless the applicant first files a  
2 surety bond or posts other security in such form as the  
3 commissioner may prescribe and a written irrevocable designation of  
4 the commissioner as agent for service of legal process.

5 (b) If a surety bond is filed, it shall be continuous and  
6 remain in effect until cancelled by the surety company with notice  
7 as provided in this section. Other security need not be posted  
8 annually so long as the applicable amount specified in this section  
9 remains posted. If a claim is made against the security causing  
10 the security to be lessened, the person posting the security has 20  
11 calendar days in which to post additional security so that  
12 compliance may be had with the requirements of this section. If  
13 the deficit is not eliminated within 20 days, the certificate of  
14 registration of the inadequately covered manufacturer, retailer,  
15 [broker~~7~~] or installer is immediately suspended. If a bond is  
16 cancelled, the certificate of registration is suspended on the  
17 effective date of cancellation.

18 (e) The bond or other security shall be to the state for the  
19 use by a consumer, the state, or any political subdivision thereof  
20 who secures any judgment against a manufacturer, retailer,  
21 [broker~~7~~] or installer for damages, restitution, or expenses  
22 including reasonable attorney's fees resulting from a cause of  
23 action directly related to the sale, lease-purchase, exchange,  
24 [brokerage~~7~~] or installation of a manufactured home, including:

25 (1) retention or conversion of money, property, or any  
26 other thing of value from consumers in the form of down payments,  
27 any sales and use taxes, deposits, or insurance premiums;



1           (2) failure to give proper title documents or  
2 certificates of title to consumers;

3           (3) failure to give or the breach of any warranty  
4 required by this article or by the Federal Trade Commission or the  
5 violation of any requirements of the Texas Credit Code or of the  
6 federal Truth-in-Lending Act; or

7           (4) engaging in any false, misleading, or deceptive  
8 acts or practices as the term is set forth in and as those acts or  
9 practices are declared unlawful by the provisions of Chapter 17,  
10 Subchapter E, Business & Commerce Code.

11          (f) A consumer shall inform the manufacturer, retailer, or  
12 installer, and the department in writing of any claim against the  
13 bond or security no later than two years after the purchase of the  
14 manufactured home. Whenever the department receives notice of a  
15 claim against a bond, the commissioner [~~department~~] shall promptly  
16 notify the bonding company involved. If the consumer claim results  
17 in a private lawsuit being filed by the consumer, the consumer  
18 shall notify the attorney general's office and the surety company  
19 by certified mail of the filing of the lawsuit. At the time of  
20 sale or delivery of a new manufactured home to a consumer, the  
21 consumer must be given conspicuous written notification of this  
22 two-year limit and the notice requirements.

23          (g) Any manufacturer, retailer, [~~broker,~~] or installer who  
24 maintains a place of business at one or more locations shall file  
25 with the commissioner [~~department~~] a separate bond or other  
26 security for each location. Property used for the business that is  
27 not contiguous to a bonded location requires a separate bond. Any

1 location at which a manufactured home is shown to the public or at  
2 which it is offered for sale, exchange, or lease-purchase by a  
3 retailer to consumers is a location which is required to be bonded.  
4 A manufactured home installed on a permanent foundation system and  
5 offered for sale as real estate is not a business location that  
6 requires a bond. A temporary location for a bona fide trade show  
7 sponsored by a nonprofit corporation which qualifies for tax  
8 exemption pursuant to Section 501(c) of the U.S. Internal Revenue  
9 Code is not a location which requires a bond.

10 (h) A manufacturer shall be bonded or post other security in  
11 the amount of \$100,000. A retailer shall be bonded or post other  
12 security in the amount of \$30,000. [~~A-broker-shall--be--bonded--or~~  
13 ~~post--other-security-in-the-amount-of-\$20,000-~~] An installer shall  
14 be bonded or post other security in the amount of \$10,000. In  
15 order to assure the availability of prompt and satisfactory  
16 warranty service, a manufacturer, which does not have a registered  
17 manufacturing plant or other facility in this state from which  
18 warranty service and repairs can be provided and made, shall be  
19 bonded or post other security in an additional amount of \$100,000.  
20 A retailer holding a valid certificate of registration shall not be  
21 required to be bonded or file any security to secure a certificate  
22 of registration as [~~a-broker-or~~] an installer. A new bond shall  
23 not be required for any change of ownership of a person registered  
24 with the commissioner [~~department~~] nor for any change of a  
25 location; however, a proper endorsement of the original bond may be  
26 required by the commissioner [~~department~~].

27 (i) The bonding company must provide written notification to

1 the commissioner [department] at least 60 days prior to the  
2 cancellation of any bond required by this section. Any other  
3 security on file with the commissioner [department] shall remain on  
4 file with the commissioner [department] for two years after the  
5 person ceases business as a manufacturer, retailer, [broker~~7~~] or  
6 installer or at such later time as the commissioner [department]  
7 may determine that no claims exist against the security.

8 SECTION 2.22. Sections 13A(a), (c), (e), (j), (l), and (m),  
9 Texas Manufactured Housing Standards Act (Article 5221f, Vernon's  
10 Texas Civil Statutes), are amended to read as follows:

11 (a) There is hereby established the manufactured homeowners'  
12 recovery fund ("fund"). The fund shall be administered and managed  
13 by the board of trustees composed of three members appointed by the  
14 governor as follows:

15 (1) the commissioner [~~of the Texas Department of Labor~~  
16 ~~and Standards~~] or other representative of the department;

17 (2) the chief of the consumer protection division of  
18 the attorney general's office or other representative of the  
19 attorney general; and

20 (3) a representative of the manufactured housing  
21 industry in this state.

22 (c) Beginning September 1, 1987, the commissioner  
23 [department] shall charge and collect an additional fee of \$10 for  
24 each and every title transaction for which it charges a fee. This  
25 additional fee shall be deposited in the special fund.

26 (e) Subject to the limitations and requirements of Section  
27 13 of this article and of this section, the fund shall be used to

1     compensate consumers who have unsatisfied judgments, or in certain  
2     limited circumstances unsatisfied claims, against a manufacturer,  
3     retailer, [~~broker~~] or installer registered with the department  
4     ("registrant") in one of the following situations:

5             (1) The consumer has obtained a final judgment which  
6     is unsatisfied against the registrant and its surety jointly and  
7     severally, or against the registrant only, if the court found that  
8     the surety was not liable due to prior payment of valid claims  
9     against the bond in an amount equal to, or greater than, the face  
10    amount of the applicable bond.

11            (2) The consumer has obtained a judgment against the  
12    surety of the registrant which is unsatisfied.

13            (3) The consumer has obtained a judgment against a  
14    registrant which has posted other security in lieu of the bond in  
15    accordance with Section 13 of this article, and such security is  
16    insufficient to satisfy the judgment.

17            (4) The consumer has alleged a claim against the  
18    registrant in a lawsuit which has been stayed or discharged as a  
19    result of the filing for reorganization or discharge in bankruptcy  
20    by the registrant and (1) judgment against the surety is not  
21    possible because of the bankruptcy or liquidation of the surety or  
22    because the surety has been found by a court of competent  
23    jurisdiction not to be liable due to prior payment of valid claims  
24    against the bond in an amount equal to, or greater than, the face  
25    amount of the applicable bond; or (2) the registrant has posted  
26    other security in lieu of the bond.

27            (j) The board of trustees shall notify the department of the

1 name of any manufacturer, retailer, [broker<sub>7</sub>] or installer named in  
2 a judgment which is the basis for a claim against the fund. If the  
3 person named is still registered with the commissioner  
4 [department], the commissioner [department] shall immediately  
5 suspend the registration, without hearing, by notifying the  
6 registrant by certified mail, return receipt requested.

7 (l) The provisions of this section do not apply to, and a  
8 consumer shall not recover against the fund as a result of, any  
9 claim against a registrant resulting from a cause of action  
10 directly related to the sale, lease-purchase, exchange, [brokerage]  
11 or installation of a manufactured home prior to September 1, 1987.

12 (m) The board of trustees shall contract with the department  
13 [Texas--Department--of--Labor--and--Standards] to serve and act as  
14 manager of the fund. The manager shall handle the administrative  
15 duties of the fund, keep such books and records as may be required  
16 by the board of trustees, cause appearances to be entered in  
17 hearings or judicial proceedings as may be necessary to protect the  
18 fund from spurious or unjust claims and to assure compliance with  
19 the requirements for recovery under this section, pay claims, and  
20 invest and reinvest the fund's assets in accordance with  
21 instructions from the board of trustees. The manager of the fund  
22 shall be paid its reasonable and necessary costs and expenses for  
23 the management of the fund; however, such costs and expenses shall  
24 only be paid out of the interest earnings of the fund and not from  
25 the proceeds of the additional title fee charge or other assets  
26 which the fund may recover.

27 SECTION 2.23. Sections 14(d), (g), and (h), Texas

1 Manufactured Housing Standards Act (Article 5221f, Vernon's Texas  
2 Civil Statutes), are amended to read as follows:

3 (d) The retailer shall give the consumer a written warranty  
4 that the installation of the new HUD-code manufactured home at the  
5 initial homesite will be completed in accordance with all  
6 standards, rules, regulations, administrative orders, and  
7 requirements of the commissioner [~~department~~] and that any  
8 appliances or equipment included with the sale of the home to be  
9 installed by the retailer have been, or will be, installed in  
10 accordance with the instructions or specifications of the  
11 manufacturer of the appliance or equipment and are free from  
12 defects in materials or workmanship. The retailer's warranty is  
13 for a period of one year from the date of initial installation of  
14 the home at the consumer's homesite. The retailer shall deliver to  
15 the consumer at the time the contract of sale is signed the  
16 following:

- 17 (1) the manufacturer's warranty;  
18 (2) the retailer's warranty;  
19 (3) the warranties for all appliances and equipment  
20 given by the manufacturers of the appliances and equipment included  
21 with, or installed in, the home; and  
22 (4) the name and address of the manufacturer and  
23 retailer to which the consumer is to give notice of warranty  
24 service requests.

25 (g) For all secondary installations not covered by the  
26 retailer's warranty as set forth in Subsection (d) of this section  
27 and for the installation of all used manufactured homes, the

1 installer shall give the manufactured home owner a written warranty  
2 that the installation of the home was done in accordance with all  
3 standards, rules, regulations, administrative orders, and  
4 requirements of the commissioner [department].

5 (h) If a manufacturer is no longer registered with the  
6 commissioner [department] or has filed for reorganization or  
7 discharge in bankruptcy, the commissioner shall give written notice  
8 of this fact to all registered retailers. The retailer must assume  
9 liability, and is fully responsible, for the manufacturer's  
10 warranty and all warranty service as to any new HUD-code  
11 manufactured home constructed by such manufacturer and sold to a  
12 consumer by the retailer following receipt of the commissioner's  
13 notice. A written notice, as required by the commissioner  
14 [department], must be given to the consumer by the retailer prior  
15 to the execution of a binding deposit agreement or retail  
16 installment sales contract. The retailer is entitled to indemnity  
17 from the manufacturer's surety or other security, and from the  
18 manufactured homeowners' recovery fund, for all warranty service  
19 performed pursuant to the manufacturer's warranty; in this  
20 situation the retailer is a "consumer" for purposes of recovery  
21 against the surety and the fund pursuant to the provisions of  
22 Sections 13 and 13A of this article. Nothing contained in this  
23 subsection authorizes a retailer to purchase new HUD-code  
24 manufactured homes from an unregistered manufacturer in violation  
25 of Section 6(h) of this article.

26 SECTION 2.24. Sections 14(e)(2), (5), and (6), Texas  
27 Manufactured Housing Standards Act (Article 5221f, Vernon's Texas

1 Civil Statutes), are amended to read as follows:

2 (2) If the manufacturer or retailer fails to provide  
3 warranty service within the reasonable time allowed by the rules of  
4 the commissioner [department], the manufacturer or retailer must  
5 show good cause in writing why such service was not provided.  
6 Failure to show good cause constitutes sufficient basis for  
7 suspension or revocation of the registration.

8 (5) After receipt of a request for a home inspection,  
9 the department will perform such inspection within 15 days. Within  
10 five days following the inspection, the commissioner [department]  
11 shall mail a [its] written report and orders, if any, to the  
12 consumer, manufacturer, and retailer by certified mail, return  
13 receipt requested. The report shall detail each of the consumer's  
14 complaints, whether or not each complaint is covered by either of  
15 the warranties and which warranty. The commissioner [department]  
16 shall issue appropriate orders to the manufacturer or retailer for  
17 correction or repair of the defects and the time allowed, which  
18 must be reasonable, for the correction.

19 (6) The manufacturer and retailer shall comply with  
20 the initial report and warranty service orders of the commissioner  
21 [department]. Such orders are not contested cases within the  
22 meaning of the Administrative Procedure and Texas Register Act  
23 (Article 6252-13a, Vernon's Texas Civil Statutes) so as to provide  
24 an opportunity for an adjudicative hearing prior to compliance. If  
25 the manufacturer or retailer, or both, fails or refuses to provide  
26 the warranty service in accordance with the orders of the  
27 department following a home inspection, the commissioner shall set



1 a hearing at which the manufacturer or retailer, or both, shall  
2 show cause why the registration should not be suspended or revoked.  
3 If, following the hearing, the commissioner finds that the prior  
4 warranty service orders were correct, the failure or refusal of the  
5 manufacturer or retailer to comply with the orders is sufficient  
6 cause for the suspension or revocation of the registration. If the  
7 commissioner finds that the prior warranty service orders were  
8 incorrect in the determination of the respective responsibilities  
9 of the manufacturer, retailer, or both, the commissioner shall  
10 enter a final order setting forth (1) the correct responsibilities,  
11 and (2) the right of either the manufacturer or retailer to  
12 indemnification from the other. The commissioner may also enter an  
13 order directing the manufacturer or retailer whose registration is  
14 not revoked to perform the warranty service responsibilities of the  
15 retailer or manufacturer whose registration is revoked by giving  
16 the manufacturer or retailer performing such warranty service the  
17 right of indemnity against the other. The manufacturer or retailer  
18 entitled to indemnification by virtue of an order of the  
19 commissioner pursuant to this subsection is a "consumer" for  
20 purposes of Sections 13 and 13A of this article and may recover its  
21 costs, expenses, and attorney's fees from the other party's surety,  
22 other security, or the manufactured homeowners' recovery fund.

23 SECTION 2.25. Sections 17(a), (b), (c), and (d), Texas  
24 Manufactured Housing Standards Act (Article 5221f, Vernon's Texas  
25 Civil Statutes), are amended to read as follows:

26 (a) A person, individual, or director, officer, or agent of  
27 a corporation who knowingly and wilfully violates a provision of

1 this Act or any rule, regulation, or administrative order of the  
2 commissioner [~~department~~] in a manner that threatens the health or  
3 safety of any purchaser or consumer commits a Class A misdemeanor  
4 and on conviction shall be fined not more than \$2,000 or shall be  
5 confined in the county jail not longer than one year or both.

6 (b) Any person who violates any provision of this Act or the  
7 rules, regulations, or administrative orders of the commissioner  
8 [~~department~~] may be assessed a civil penalty to be paid to the  
9 State of Texas in an amount not to exceed \$1,000 for each such  
10 violation as the court may deem proper, except that the maximum  
11 civil penalty may not exceed \$1,000,000 for any related series of  
12 violations occurring within one year from the date of the first  
13 violation. In lieu of revoking or suspending the registration  
14 pursuant to Subsection (k) of Section 7 of this Act, and with the  
15 agreement of the registrant, the commissioner [~~department~~] may  
16 assess an administrative [~~a--civil~~] penalty in an amount not to  
17 exceed \$1,000 for each [~~and-every~~] violation of this Act or the  
18 rules, regulations, or administrative orders of the commissioner  
19 [~~department~~], provided that the aggregate administrative [~~civil~~]  
20 penalties as to any one registrant shall not exceed \$50,000 for any  
21 related series of violations occurring within one year from the  
22 date of the first violation.

23 (c) Whenever it appears that any person has violated or is  
24 threatening to violate any of the provisions of this Act or of the  
25 rules, regulations, or administrative orders of the commissioner  
26 [~~department~~], the attorney general, the department, or any person  
27 holding a valid registration pursuant to this Act may cause a civil

1 suit to be instituted either for injunctive relief to restrain the  
2 person from continuing the violation or threat of violation, or  
3 [ef] for the assessment and recovery of the civil penalty, or for  
4 both. If the injunctive relief is granted or a civil penalty  
5 assessed, the plaintiff or petitioner shall be awarded reasonable  
6 attorney fees and costs of suit.

7 (d) Failure by a manufacturer or retailer to comply with the  
8 warranty provisions of this article or any implied warranties or  
9 the violation of any provision of this article by any person is a  
10 deceptive trade practice in addition to those practices delineated  
11 in Chapter 17, Subchapter E, Business & Commerce Code and is  
12 actionable pursuant to said subchapter. As such, the venue  
13 provisions and all remedies available in said subchapter apply to  
14 and are cumulative of the remedies in this article. However,  
15 notwithstanding any provisions of law to the contrary, a lawsuit  
16 containing allegations that the manufacturer or retailer failed to  
17 perform warranty obligations or failed to comply with any written  
18 or implied warranties shall be abated, provided that a plea in  
19 abatement is filed with the court not more than 45 days following  
20 the answer date of the movant, if the manufacturer or retailer  
21 requests a consumer complaint inspection pursuant to the provisions  
22 of Section 14 of this article. The abatement shall continue until  
23 the department has performed a consumer complaint inspection and  
24 the retailer, manufacturer, or both have been given an opportunity  
25 to comply with the inspection report, determinations, and orders of  
26 the commissioner [department]; however, the abatement shall not be  
27 granted for a period in excess of 150 days. A consumer's refusal

1 to allow the manufacturer or retailer to perform warranty service  
2 pursuant to the inspection report, determinations, or orders of the  
3 commissioner [~~department~~] is a bar to any cause of action relating  
4 to alleged failure to comply with any written or implied warranties  
5 or perform warranty service.

6 SECTION 2.26. Section 18(d), Texas Manufactured Housing  
Standards Act (Article 5221f, Vernon's Texas Civil Statutes), is  
8 amended to read as follows:

9 (d) If a retailer[~~7-broker7~~] or installer does not possess a  
10 valid certificate of registration at the time of entering into any  
11 contract with a consumer, the contract between the consumer and the  
12 retailer[~~7-broker7~~] or installer is voidable within two years from  
13 the date of the purchase of the manufactured home at the option of  
14 the consumer. A consumer's contract for the purchase, exchange, or  
15 lease-purchase of a new manufactured home is also voidable within  
16 two years from the date of the purchase of the manufactured home,  
17 if the retailer purchased the home from an unregistered  
18 manufacturer in violation of Section 6, Subsection (h) of this  
19 article.

20 SECTION 2.27. Sections 19(a)(2), (3), (4), and (7), Texas  
21 Manufactured Housing Standards Act (Article 5221f, Vernon's Texas  
22 Civil Statutes), are amended to read as follows:

23 (2) "Document of title" means a written instrument  
24 issued solely by and under the authority of the commissioner  
25 [~~department~~] that sets forth:

26 (A) the name and address of the purchaser and  
27 seller at the first retail sale, or the transferee and transferor

1 at any subsequent sale or transfer;

2 (B) the manufacturer's name and address and, if  
3 any, the model designation;

4 (C) in accordance with applicable rules of the  
5 commissioner [department], the outside dimensions of the  
6 manufactured home when installed for occupancy exclusive of the  
7 tongue or other towing device as measured to the nearest one-half  
8 of one foot at the base of the home, and the approximate square  
9 footage of the home when installed for occupancy;

10 (D) the identification number or numbers for  
11 each section or module of the manufactured home;

12 (E) the county of this state in which the  
13 manufactured home is installed for occupancy;

14 (F) the dates of any liens, and the names and  
15 addresses of the lienholders, in chronological order of  
16 recordation, and if no liens are registered or recorded on the  
17 manufactured home, a statement of that fact;

18 (G) the signature of the owner signed with pen  
19 and ink on receipt of the certificate;

20 (H) that if a husband and wife file, with the  
21 application for document of title, an agreement signed by both  
22 providing that the manufactured home is to be held jointly with  
23 rights of survivorship, the commissioner [department] will issue  
24 the document of title in both names; and

25 (I) any other data the commissioner [department]  
26 requires.

27 (3) "First retail sale" means the initial acquisition

1 by a consumer of a new manufactured home by purchase, exchange, or  
2 lease-purchase from a retailer and includes a bargain, sale,  
3 transfer, or delivery with intent to pass an interest other than a  
4 lien, to a manufactured home for which a document of title has not  
5 been previously issued by the commissioner [department].

6 (4) "Identification number" means the permanent number  
7 affixed to, or imprinted on, a manufactured home or section of the  
8 home as prescribed by the rules of the commissioner [department].

9 (7) "Manufacturer's certificate" means a document, or  
10 a form prescribed by the commissioner [department], that shows the  
11 original transfer of a manufactured home from the manufacturer to  
12 the retailer, and if presented with an application for a document  
13 of title, the certificate must show, on a form prescribed by the  
14 commissioner [department], each subsequent transfer between  
15 retailers and retailer to owner.

16 SECTION 2.28. Sections 19(b), (c), (d), (e), (f), (g), (h),  
17 (i), (j), (l), (m), (q), (r), (s), (t), and (u), Texas Manufactured  
18 Housing Standards Act (Article 5221f, Vernon's Texas Civil  
19 Statutes), are amended to read as follows:

20 (b) The commissioner [department] shall prescribe forms and  
21 adopt rules relating to manufacturer's certificates, to  
22 applications for documents of title, and to the issue of documents  
23 of title at the first retail sale and for each subsequent sale or  
24 transfer of a manufactured home.

25 (c)(1) At the first retail sale, the retailer and purchaser  
26 shall apply for the issuance of a document of title. As a part of  
27 the application, the retailer shall surrender the original

1 manufacturer's certificate. At a subsequent sale or transfer the  
2 seller and purchaser, or the transferor and transferee, shall apply  
3 for the issuance of a new document of title. As a part of the  
4 application, the seller or transferor shall surrender the original  
5 document of title.

6 (2) The commissioner [department] may refuse to issue  
7 a document of title, or may suspend or revoke a document of title,  
8 if:

9 (A) the application contains any false or  
10 fraudulent statement, or the applicant has failed to furnish  
11 information required by the commissioner [department], or the  
12 applicant is not lawfully entitled to the issuance of a document of  
13 title;

14 (B) the commissioner [department] has reasonable  
15 basis to believe that the manufactured home has been stolen or  
16 unlawfully converted, or the issuance of a document of title would  
17 constitute a fraud against the rightful owner or a lienholder;

18 (C) the commissioner [department] has reasonable  
19 basis to believe that the manufactured home is "salvaged" as  
20 defined in Section 8 of this article and a salvage title has not  
21 been applied for; or

22 (D) the required fee has not been paid.

23 (3) If the commissioner [department] refuses to issue,  
24 or suspends or revokes, a document of title, written notice of such  
25 action must be given by certified mail to the seller and purchaser,  
26 or transferor and transferee, and to the holder of a lien or  
27 security interest of record. Such action by the commissioner

1    [department] is a contested case within the meaning of the  
2    Administrative Procedure and Texas Register Act, as amended  
3    (Article 6252-13a, Vernon's Texas Civil Statutes)[~~7-and-the--person~~  
4    ~~having--an-interest-in-the-manufactured-home-may-appeal-such-action~~  
5    ~~to-the-commissioner~~]. Notice of the appeal and request for hearing  
6    must be filed with the commissioner within 30 days following notice  
7    of the commissioner's [department's] action.

8           (d) If there are no liens registered or recorded, the  
9    commissioner [department] shall issue a document of title marked  
10   "ORIGINAL" on its face and shall send the original by first class  
11   mail to the purchaser or transferee at the address on the  
12   application. If a lien is shown in the application or recorded  
13   with the department, the commissioner [department] shall issue a  
14   document of title marked "ORIGINAL" on its face and send the  
15   original by first class mail to the first lienholder. The  
16   commissioner [department] shall mail, first class, a copy of the  
17   document of title conspicuously marked "NONTRANSFERABLE COPY" on  
18   its face to the purchaser or transferee and any other lienholder at  
19   the address shown on the application.

20           (e) The owner designated in the original document of title  
21   must transfer the title on a form prescribed by the commissioner  
22   [department] executed before a notary public and must file the form  
23   with the department before a manufactured home may be conveyed,  
24   transferred, or otherwise disposed of at a subsequent sale. The  
25   form must include any information the commissioner [department]  
26   requires and must include an affidavit that the person signing is  
27   the owner of the manufactured home and that there are no liens on



1 the home except a lien shown on the document of title or described  
2 in the affidavit. A title to a manufactured home may not pass or  
3 vest at a subsequent sale until the transfer is executed as  
4 provided by this section and an application for the issuance of a  
5 new document of title is sent to the department.

6 (f) When the ownership of a manufactured home in this state  
7 is transferred by operation of law, as in an inheritance, a devise,  
8 or a bequest, bankruptcy, receivership, judicial sale, or any  
9 involuntary divestiture of ownership, the commissioner [department]  
10 shall issue a new document of title when the department is provided  
11 with a certified copy of the order or bill of sale from an officer  
12 making a judicial sale, or the order appointing a temporary  
13 administrator, the probate proceedings, the letters testamentary,  
14 the letters of administration, or an affidavit by all of the heirs  
15 at law showing that no administration is necessary and showing in  
16 whose name the certificate should be issued. If a security  
17 interest or other lien is foreclosed in accordance with law by  
18 nonjudicial means and the secured party or other mortgagee files an  
19 affidavit with the department showing the nonjudicial foreclosure  
20 in accordance with law, the commissioner [department] may issue a  
21 new document of title in the name of the purchaser at the  
22 foreclosure sale. If the foreclosure is of a constitutional or  
23 statutory lien and the mortgagee files an affidavit showing the  
24 creation of the lien and of the divestiture of title because of the  
25 lien in accordance with law, the commissioner [department] may  
26 issue a new document of title in the name of the purchaser. If an  
27 agreement providing for right of survivorship is signed by the

1 husband and wife and if on the death of either spouse the  
2 department is provided with a copy of the death certificate of the  
3 deceased spouse, the commissioner [department] shall issue a new  
4 document of title to the surviving spouse.

5 (g) If an original document of title is lost or destroyed,  
6 the owner or lienholder may obtain a certified copy of the original  
7 from the department by making an affidavit on a form prescribed by  
8 the commissioner [department]; but the commissioner [department]  
9 shall issue the certified copy only to the first lienholder if a  
10 lien is disclosed on the original. The certified copy shall be  
11 conspicuously marked "CERTIFIED COPY OF ORIGINAL" on its face. If  
12 the original is recovered, the owner or lienholder shall  
13 immediately surrender the original to the department with the  
14 certified copy of the original document of title, and the  
15 commissioner [department] shall issue a new original document of  
16 title.

17 (h) The commissioner [department] shall record all state tax  
18 liens as filed by the comptroller on manufactured homes installed  
19 for use and occupancy in this state. The commissioner [department]  
20 may not issue or transfer the title to a manufactured home on which  
21 a state tax lien has been filed until the tax, penalties, and  
22 interest are paid. On receipt of a notice that the comptroller has  
23 filed a lien, the commissioner [department] shall notify the owner  
24 and all lienholders.

25 (i) A lien on the manufactured homes in the inventory is  
26 perfected by filing a security agreement with the department in a  
27 form that contains the information the commissioner [department]

1 requires. Failure to pay or satisfy any inventory lien filed and  
2 recorded against a manufactured home pursuant to the terms of the  
3 security agreement by the retailer is sufficient cause to revoke or  
4 suspend the retailer's registration with the commissioner  
5 [department].

6 (j) If a manufactured home is affixed to real estate by  
7 installation on a permanent foundation, as defined by the  
8 department, the manufacturer's certificate or the original document  
9 of title may be surrendered to the department for cancellation.  
10 The address and location of the real estate must be given to the  
11 department when the certificate or document of title is  
12 surrendered. The commissioner [department] may require the filing  
13 of other information. The commissioner [department] may not cancel  
14 a manufacturer's certificate or a document of title if a lien has  
15 been registered or recorded on the manufactured home. If a lien  
16 has been registered or recorded, the commissioner [department]  
17 shall notify the owner and each lienholder that the title and a  
18 description of the lien have been surrendered to the department and  
19 that the commissioner [department] will not cancel the title until  
20 the lien is released. Permanent attachment to real estate does not  
21 affect the validity of a lien recorded or registered with the  
22 department before the manufactured home is permanently attached.  
23 The rights of a prior lienholder pursuant to a security agreement  
24 or the provisions of a credit transaction and the rights of the  
25 state pursuant to a tax lien are preserved.

26 (1) Notwithstanding any other provisions of this section,  
27 the filing of a security agreement by a secured party perfecting a

1     lien in the inventory of a retailer shall not prevent a buyer in  
2     the ordinary course of business as defined by Sections 1.201(9) and  
3     9.307(a) of the Business & Commerce Code from acquiring good title  
4     free and clear of such interest, and the commissioner [department]  
5     shall not consider such security interest as a lien for the purpose  
6     of title issuance.

7           (m) The commissioner [department] shall furnish each county  
8     tax assessor-collector in this state a quarterly report that lists  
9     the name of the owner of each manufactured home installed in the  
10    county during the preceding calendar quarter, the name of the  
11    manufacturer, the model designation, the identification number of  
12    each section or module, and the address or location where the  
13    manufactured home is installed. The commissioner [department]  
14    shall furnish a copy of the report to the chief appraiser of the  
15    appraisal district established for the county in which the  
16    manufactured home is installed.

17          (q) The commissioner [department] shall adopt rules  
18    consistent with this article for the titling of a manufactured home  
19    that has been previously registered or titled in this state or any  
20    other state. The rules must protect a lienholder recorded on a  
21    certificate or document of title.

22          (r) The commission [department] shall set fees for issuing  
23    and cancelling titles to manufactured housing which shall include  
24    \$10 for each title transaction which shall be paid to the State  
25    Treasury and deposited in a fund to be known as the manufactured  
26    homeowners' recovery fund. These fees are hereby appropriated, and  
27    reappropriated, respectively, to the department and the

1 manufactured homeowners' recovery fund.

2 (s) The department shall print on every document of title  
3 issued by the commissioner [department] under this section a notice  
4 that the document of title may not reflect the existence of a tax  
5 lien notice filed for the manufactured home since the document of  
6 title was issued and that information about tax liens for which  
7 notice has been filed may be obtained from the department on  
8 written request.

9 (t) On the written request of a person containing the name  
10 of the owner of a manufactured home having a document of title or  
11 the identification number of a manufactured home, the commissioner  
12 [department] shall furnish information held by the department on  
13 the current ownership of the manufactured home and the existence of  
14 any tax liens on the manufactured home for which notice has been  
15 filed with the department.

16 (u) The commissioner [department] shall cancel titles to  
17 manufactured homes which have been sold, exchanged, or  
18 lease-purchased to purchasers for the purchasers' business use.  
19 [~~New-titles-may-be-issued-on-proper-application-following-an~~  
20 ~~inspection-and-determination-that-the-home-is-habitable.~~] The  
21 commissioner [department] shall issue salvage titles for salvaged  
22 manufactured homes, as defined in Section 8 of this article, and  
23 may issue new titles if the new home is rebuilt pursuant to the  
24 rules and regulations of the commissioner [department].

25 SECTION 2.29. Section 20, Texas Manufactured Housing  
26 Standards Act (Article 5221f, Vernon's Texas Civil Statutes), is  
27 amended to read as follows:

1           Sec. 20. NOTICE TO CONSUMERS BEFORE TITLE TRANSFER. (a) A  
2 retailer or manufacturer shall not transfer title to a HUD-Code  
3 manufactured home nor otherwise sell, assign or convey a HUD-Code  
4 manufactured home to a consumer without delivering the formaldehyde  
5 health notice required by this section subject to applicable rules  
6 of the commissioner [department]. The notice shall be delivered to  
7 the consumer prior to the execution of any mutually binding sales  
8 agreement or retail installment sales contract.

9           (b) The content of the notice shall be the same as required  
10 by the U.S. Department of Housing and Urban Development and of such  
11 type, size, and format as prescribed by the commissioner  
12 [department]. A retailer or manufacturer shall not vary the  
13 provisions or form of the notice; it is sufficient and adequate, as  
14 a matter of law, to advise consumers of the risks of occupying the  
15 home.

16           (c) The knowing and willful failure of a retailer or a  
17 manufacturer to comply with the applicable regulations of the U.S.  
18 Department of Housing and Urban Development and of the commissioner  
19 [department] is conclusive that such person breached the duty to  
20 notify the consumer about formaldehyde and that the home is not  
21 habitable; compliance with such applicable regulations by a  
22 retailer or a manufacturer is conclusive that the consumer received  
23 sufficient and adequate notice of the risks of occupying the home  
24 and that the home is habitable as regards formaldehyde emissions.

25           [ (d) --The--knowing--and--willful--failure--of--a--retailer--or--a--  
26 manufacturer,--from--September--1,--1981,--to--September--1,--1985,--to  
27 comply---with---the---applicable---provisions---of---Section--20,--Texas

1 Manufactured-Housing-Standards-Act- (Article-5221f,--Vernon's--Texas  
2 Civil---Statutes),---and---the---revised--formaldehyde--warning--as  
3 promulgated-by-the-department-continues-to-be-conclusive-that--such  
4 person--breached-the-duty-to-notify-the-consumer-about-formaldehyde  
5 and-that-the-home-is-not-habitable,-compliance,-from--September--1,  
6 1981,--to--September--1,--1985,--with--the-applicable-provisions-of  
7 Section-20,--Texas--Manufactured--Housing--Standards--Act-- (Article  
8 5221f,--Vernon's-Texas-Civil-Statutes),-and-the-revised-formaldehyde  
9 warning-as-promulgated-by-the-department-continues-to-be-conclusive  
10 that--the--consumer--received-sufficient-and-adequate-notice-of-the  
11 risks-of-occupying-the-home-and--that--the--home--is--habitable--as  
12 regards-formaldehyde-emissions.]

13 SECTION 2.30. Section 1, Article 5221f-1, Revised Statutes,  
14 is amended by amending Subdivisions (4) and (5) and by adding  
15 Subdivision (7) to read as follows:

16 (4) "Department" means the Texas Department of  
17 Licensing and Regulation [Labor-and-Standards].

18 (5) "Commissioner" means the commissioner of licensing  
19 and regulation [the-Texas-Department-of-Labor-and-Standards].

20 (7) "Commission" means the Texas Commission of  
21 Licensing and Regulation.

22 SECTION 2.31. Section 2(d), Article 5221f-1, Revised  
23 Statutes, is amended to read as follows:

24 (d) All areas of authority belonging to municipalities are  
25 specifically and entirely reserved to them. That authority may  
26 include local land use and zoning requirements, building setback  
27 requirements, side and rear yard requirements, site planning and

1 development and property line requirements, subdivision control,  
2 and landscape architectural requirements. Those local requirements  
3 and regulations and others not in conflict with this article or  
4 other state law relating to transportation, erection, or  
5 installation, or use, shall be reasonably and uniformly applied and  
6 enforced without distinctions as to whether the housing or  
7 buildings are manufactured or are constructed on-site. A  
8 municipality that regulates on-site construction or installation  
9 specifically has authority to:

10 (1) require and review, for compliance with the  
11 mandatory state codes, a complete set of design plans and  
12 specifications bearing the stamp of the council for each  
13 installation within its corporate limits;

14 (2) require that all applicable local permits and  
15 licenses be obtained before any construction begins on a building  
16 site;

17 (3) require that all modules or modular components  
18 bear an approved decal or insignia under rules of the department  
19 reflecting that they have been inspected at the manufacturing plant  
20 or facility; and

21 (4) establish procedures for the inspection of the  
22 erection and installation of any industrialized housing or  
23 buildings to be located within its corporate limits to assure  
24 compliance with the mandatory codes and the rules of the  
25 commissioner [department] and for the inspection of all foundation  
26 and other on-site construction to assure compliance with approved  
27 designs, plans, and specifications; these procedures may require



1 final inspections and tests before occupancy in accordance with the  
2 mandatory codes and may require correction of deficiencies  
3 identified by the tests or discovered in final inspections.

4 SECTION 2.32. Section 4, Article 5221f-1, Revised Statutes,  
5 is amended by amending Subsections (a) and (b) and by adding  
6 Subsection (c) to read as follows:

7 Sec. 4. BUILDING INSPECTIONS. (a) The department shall  
8 inspect the construction of industrialized housing or buildings at  
9 the manufacturing plant or facility to assure compliance with the  
10 approved designs, plans, and specifications. Instead of using  
11 department [~~its--own~~] personnel for in-plant inspections, the  
12 commissioner [~~department~~] may designate third-party inspectors  
13 approved by the council to perform these inspections subject to  
14 rules of the commissioner [~~department~~]. Local building officials  
15 shall be permitted to witness in-plant inspections in order to make  
16 recommendations for inspection procedures to the council.

17 (b) The construction of the foundation system and the  
18 erection and installation of the modules or modular components on  
19 the permanent foundation to assure compliance with the designs,  
20 plans, and specifications for industrialized housing or buildings  
21 to be sited within the corporate limits of a city shall be  
22 inspected by the city building official along with all construction  
23 done at the permanent site location. If the industrialized housing  
24 or building is to be located outside the corporate limits of any  
25 city, the on-site inspections shall be performed by third-party  
26 inspectors approved by the council or by the commissioner  
27 [~~department~~].

1        (c) The commissioner, by rule, may authorize a building  
2        inspection of industrialized housing or buildings constructed in  
3        another state to be performed by an inspector of the equivalent  
4        regulatory agency of the other state and also may authorize the  
5        performance of inspections of industrialized housing or buildings  
6        that are constructed in this state for use in another state. The  
7        commissioner must enter a reciprocity agreement with the agency of  
8        the other state as necessary to implement this section.

9        SECTION 2.33. Sections 5(f) and (m), Article 5221f-1,  
10       Revised Statutes, are amended to read as follows:

11       (f) The commissioner [~~department~~] shall recommend qualified  
12       third-party inspectors and design review agencies to the council.  
13       The council shall establish criteria for the approval of, and it  
14       must approve, all third-party inspectors and design review  
15       agencies. The commissioner [~~department~~] shall publish a listing of  
16       all approved inspectors and design review agencies.

17       (m) The commissioner [~~department~~] shall adopt rules as may  
18       be necessary to implement the actions and decisions of the council.  
19       The decisions, actions, and interpretations of the council are  
20       binding on the department, third-party inspectors, design review  
21       agencies, and municipalities and other local political  
22       subdivisions.

23       SECTION 2.34. Section 6, Article 5221f-1, Revised Statutes,  
24       is amended to read as follows:

25       Sec. 6. REGISTRATION; [DEPARTMENT] RULES. The commissioner  
26       [~~department~~] shall adopt rules and regulations and promulgate  
27       administrative orders as necessary to assure compliance with the

1 intent and purpose of this Act and to provide for uniform  
2 enforcement. The rules and regulations shall ~~[may]~~ provide for  
3 registration and regulation of manufacturers or builders of  
4 industrialized housing or buildings and for the placement of decals  
5 or insignia on each transportable modular section or modular  
6 component to indicate compliance with the mandatory codes. The  
7 commissioner ~~[department]~~ must adopt rules as appropriate to  
8 implement actions, decisions, interpretations, and instructions of  
9 the council.

10 SECTION 2.35. Article 522lf-1, Revised Statutes, is amended  
11 by adding Section 6A to read as follows:

12 Sec. 6A. CONTINUING EDUCATION. The commissioner may  
13 recognize, prepare, or administer continuing education programs for  
14 persons regulated under this article. Participation in the  
15 programs is voluntary.

16 SECTION 2.36. Sections 7(a) and (b), Article 522lf-1,  
17 Revised Statutes, are amended to read as follows:

18 (a) The commission ~~[department]~~ shall set fees for  
19 registration of manufacturers or builders constructing  
20 industrialized housing or buildings, for the inspection of  
21 industrialized housing or buildings at the manufacturing plant or  
22 facility, and for the issuance of decals or insignia in amounts  
23 that pay for all costs of the inspections and administration of  
24 this article. These fees shall be paid to the state treasurer and  
25 placed in the general revenue fund.

26 (b) If an approved third-party inspector does inspections,  
27 fees may be paid directly to the third-party inspector [~~but-must-be~~

1     ~~forwarded-through-the-department-for-approval~~].

2             SECTION 2.37. Sections 8(a), (b), and (d), Article 5221f-1,  
3     Revised Statutes, are amended to read as follows:

4             (a) No person shall construct, sell or offer to sell, lease  
5     or offer to lease, or transport over the roads, streets, or  
6     highways of this state any industrialized housing or buildings, or  
7     modular sections or components thereof, in violation of this  
8     article or the rules, regulations, or administrative orders of the  
9     commissioner [department].

10            (b) Any person who violates any provision of this article or  
11     of the rules, regulations, or administrative orders of the  
12     commissioner [department] may be assessed a civil penalty to be  
13     paid to the State of Texas in an amount not to exceed \$1,000 for  
14     each such violation as the court may deem proper.

15            (d) A person who knowingly and wilfully violates any  
16     provision of this article or of any published rule, regulation, or  
17     administrative order of the commissioner [department] commits a  
18     Class A misdemeanor.

19            SECTION 2.38. Section 9, Article 5221f-1, Revised Statutes,  
20     is amended to read as follows:

21            Sec. 9. ADMINISTRATIVE SANCTIONS.     (a) The commissioner[  
22     ~~after-notice-and-hearing~~] may refuse to issue or may permanently  
23     revoke, or suspend for a definite period of time and for a  
24     specified geographic area or location, any certificate of  
25     registration if the commissioner finds that the applicant or  
26     registrant:

27            (1) furnished false information on any application,

1 report, or other document filed with the department;

2 (2) failed to pay any fee or to furnish or file any  
3 reports required by the department for the administration and  
4 enforcement of this article;

5 (3) engaged in any false, misleading, or deceptive  
6 acts or practices as those terms are set forth in and as those acts  
7 are declared unlawful by the provisions of Chapter 17, Subchapter  
8 E, Business & Commerce Code; or

9 (4) violated any provision of this article or any  
10 rule, regulation, or administrative order made or issued by the  
11 commissioner [~~department~~] pursuant to this article or any  
12 decisions, actions, or interpretations of the council.

13 (b) If the commissioner proposes to suspend or revoke a  
14 person's certificate of registration, the person is entitled to a  
15 hearing before the commissioner or a hearings officer appointed by  
16 the commissioner. The commissioner shall prescribe procedures by  
17 which all decisions to suspend or revoke are made by or are  
18 appealable to the commissioner.

19 SECTION 2.39. Section 2, Vehicle Storage Facility Act  
20 (Article 6687-9a, Revised Statutes), is amended to read as follows:

21 Sec. 2. DEFINITIONS. In this article:

22 (1) "Commissioner" means the commissioner of licensing  
23 and regulation.

24 (2) "Department" means the Texas Department of  
25 Licensing and Regulation [~~Labor-and-Standards~~].

26 (3) [~~2~~] "Vehicle storage facility" means a garage,  
27 parking lot, or any type of facility owned by a person other than a

1 governmental entity for storing or parking 10 or more vehicles.

2           (4) [~~3~~] "Vehicle" means a motor vehicle subject to  
3 registration under the Certificate of Title Act (Article 6687-1,  
4 Vernon's Texas Civil Statutes) or any other device designed to be  
5 self-propelled or transported on a public highway.

6           (5) [~~4~~] "Owner of a vehicle" means:

7                   (A) a person in whose name the vehicle is  
8 registered under the Certificate of Title Act (Article 6687-1,  
9 Vernon's Texas Civil Statutes);

10                   (B) a person in whose name the vehicle is  
11 registered under Section 2, Chapter 88, General Laws, Acts of the  
12 41st Legislature, 2nd Called Session, 1929 (Article 6675a-2,  
13 Vernon's Texas Civil Statutes), or a member of the person's  
14 immediate family;

15                   (C) a person who holds the vehicle through a  
16 valid lease agreement; or

17                   (D) an unrecorded lienholder whose right to  
18 possess the vehicle exists through a chattel mortgage.

19           SECTION 2.40.     Section 4, Vehicle Storage Facility Act  
20 (Article 6687-9a, Revised Statutes), is amended to read as follows:

21           Sec. 4.   AUTHORITY.   (a) The commissioner may [~~department-is~~  
22 ~~authorized--to~~] issue licenses to operate vehicle storage  
23 facilities.

24                   (b) The commissioner [~~department~~] shall adopt rules  
25 establishing requirements for the licensing of persons to operate  
26 vehicle storage facilities to ensure that licensed storage  
27 facilities maintain adequate standards for the care of stored

1 vehicles.

2 SECTION 2.41. Section 5, Vehicle Storage Facility Act  
3 (Article 6687-9a, Revised Statutes), is amended to read as follows:

4 Sec. 5. PROHIBITION. A person may not operate a vehicle  
5 storage facility unless the person holds a current license to  
6 operate a vehicle storage facility issued to the person by the  
7 commissioner [department].

8 SECTION 2.42. Section 6(a), Vehicle Storage Facility Act  
9 (Article 6687-9a, Revised Statutes), is amended to read as follows:

10 (a) The commissioner [department] by rule shall determine  
11 the types of information to be supplied on an application for a  
12 license under this article, but the rules must require that an  
13 application be made under oath and list:

14 (1) each conviction of a felony, or a misdemeanor for  
15 which the maximum punishment is by confinement in jail or by a fine  
16 exceeding \$200, that was obtained against the applicant or a  
17 partner or officer of the applicant in the three years immediately  
18 preceding the date of the application;

19 (2) the name and address of each partner, if the  
20 applicant is a partnership; and

21 (3) the name and address of the president, secretary,  
22 and treasurer of the corporation, if the applicant is a  
23 corporation.

24 SECTION 2.43. Section 7, Vehicle Storage Facility Act  
25 (Article 6687-9a, Revised Statutes), is amended to read as follows:

26 Sec. 7. APPROVAL. The commissioner [department] shall  
27 approve an application that is submitted as provided by Section 6

1 of this article for a license to operate a vehicle storage facility  
2 unless the commissioner [department] determines that:

3 (1) the applicant knowingly supplied false or  
4 incomplete information on the application;

5 (2) the applicant, one of the applicant's partners, or  
6 one of the applicant's officers has been convicted of a felony, or  
7 a misdemeanor for which the maximum punishment is by confinement in  
8 jail or by a fine exceeding \$500, in the three years preceding the  
9 date of the application; or

10 (3) the vehicle storage facility for which the license  
11 is sought does not meet the standards for storage facilities  
12 established by the rules of the commissioner [department].

13 SECTION 2.44. Section 8, Vehicle Storage Facility Act  
14 (Article 6687-9a, Revised Statutes), is amended to read as follows:

15 Sec. 8. NOTICE OF DENIAL. If the commissioner [department]  
16 denies an application for a license under this article, the  
17 department shall send written notice of the [its] decision to the  
18 applicant, at the address shown on the application, by certified  
19 mail, return receipt requested. The notice shall state the reason  
20 for the commissioner's [department's] decision and that the  
21 applicant is entitled to a hearing before the commissioner  
22 [department] under Section 11 of this article. The notice may  
23 state that the decision is temporary pending compliance by the  
24 applicant. If the decision is temporary and the applicant complies  
25 with the requirements of this article and rules of the commissioner  
26 [department] before the 15th day after the date the applicant  
27 receives the notice, the commissioner [department] shall then



1 approve the application.

2 SECTION 2.45. Section 9, Vehicle Storage Facility Act  
3 (Article 6687-9a, Revised Statutes), is amended to read as follows:

4 Sec. 9. TERM OF LICENSE. (a) A license issued under this  
5 article is valid for the period set by the commission [~~expires--on~~  
6 ~~December-31-of-the-year-in-which-it-is-issued~~].

7 (b) A person may apply to the commission [~~department~~] to  
8 renew the license on an application form approved by the commission  
9 [~~department~~]. [~~An-application-for-renewal-of--a--license--must--be~~  
10 ~~accompanied-by-a-fee-of-\$100-~~]

11 (c) [~~If--an--application--for--renewal--of--a--license-is-not~~  
12 ~~submitted-before-the-31st-day-after--the--expiration--date--of--the~~  
13 ~~license,-the-license-may-not-be-renewed-~~

14 [~~d~~] A person whose license expires and is not renewed  
15 under this section may apply for a new license under Section 6 of  
16 this article.

17 SECTION 2.46. The Vehicle Storage Facility Act (Article  
18 6687-9a, Revised Statutes) is amended by adding Section 9A to read  
19 as follows:

20 Sec. 9A. CONTINUING EDUCATION. The commissioner may  
21 recognize, prepare, or administer continuing education programs for  
22 licensees. Participation in the programs is voluntary.

23 SECTION 2.47. Section 10, Vehicle Storage Facility Act  
24 (Article 6687-9a, Revised Statutes), is amended to read as follows:

25 Sec. 10. REVOCATION. (a) The commissioner [~~department~~] may  
26 revoke a license or deny an application to renew a license issued  
27 under this article if the commissioner [~~department~~] determines

1 that:

2 (1) the licensee, one of the licensee's partners, or  
3 one of the licensee's officers has been convicted of a felony, or a  
4 misdemeanor for which the maximum punishment is by confinement in  
5 jail or by a fine exceeding \$500, which directly relates to a duty  
6 or responsibility of an operator of a vehicle storage facility;

7 (2) the vehicle storage facility for which the license  
8 was issued does not meet a standard for a vehicle storage facility  
9 set by rule of the commissioner [department]; or

10 (3) the licensee knowingly violated a rule of the  
11 commissioner [department], or an employee of the licensee, with the  
12 licensee's knowledge, violated a rule of the commissioner  
13 [department].

14 (b) The commissioner [department] shall send notice of the  
15 revocation or denial to the licensee by certified mail, return  
16 receipt requested, before the eighth day after the date of the  
17 decision.

18 SECTION 2.48. Section 11(a), Vehicle Storage Facility Act  
19 (Article 6687-9a, Revised Statutes), is amended to read as follows:

20 (a) A person whose application for a license to operate a  
21 storage facility has been denied, whose license has been revoked,  
22 or whose application to renew a license has been denied may, before  
23 the 15th day after the date the person receives notice of the  
24 revocation or denial, request in writing a hearing before the  
25 commissioner [department] on the revocation or denial.

26 SECTION 2.49. Section 15, Vehicle Storage Facility Act  
27 (Article 6687-9a, Revised Statutes), is amended to read as follows:

1           Sec. 15. USE OF FEES. The commissioner [~~department~~] shall  
2 remit all fees collected under this article to the State Treasurer  
3 for deposit in the State Treasury to the credit of a fund to be  
4 used, subject to legislative appropriation, for administering this  
5 article.

6           SECTION 2.50. Section 1, Chapter 1135, Acts of the 70th  
7 Legislature, Regular Session, 1987 (Article 6687-9b, Vernon's Texas  
8 Civil Statutes), is amended to read as follows:

9           Sec. 1. DEFINITIONS. In this Act:

10                   (1) "Commission" means the Texas Commission of  
11 Licensing and Regulation.

12                   (2) "Commissioner" means the commissioner of licensing  
13 and regulation.

14                   (3) "Department" means the Texas Department of  
15 Licensing and Regulation [~~Labor-and-Standards~~].

16                   (4) [~~2~~] "Tow truck" means a motor vehicle or  
17 mechanical device adapted or used to tow, winch, or otherwise move  
18 disabled motor vehicles.

19                   (5) [~~3~~] "Tow truck owner" means a person engaged in  
20 the business of using a tow truck to tow, winch, or otherwise move  
21 a motor vehicle.

22           SECTION 2.51. Sections 2(a) and (b), Chapter 1135, Acts of  
23 the 70th Legislature, Regular Session, 1987 (Article 6687-9b,  
24 Vernon's Texas Civil Statutes), are amended to read as follows:

25           (a) Except as provided by Section 5 of this Act, a person  
26 may not operate a tow truck [~~for-compensation~~] in this state unless  
27 the tow truck is registered with the department as provided by this

1 Act.

2 (b) The commissioner [department] shall issue a certificate  
3 of registration to a tow truck owner whose vehicle meets the  
4 registration requirements prescribed by [department] rule of the  
5 commissioner and who pays the registration fee.

6 SECTION 2.52. Section 3, Chapter 1135, Acts of the 70th  
7 Legislature, Regular Session, 1987 (Article 6687-9b, Vernon's Texas  
8 Civil Statutes), is amended to read as follows:

9 Sec. 3. POWERS AND DUTIES OF COMMISSIONER [DEPARTMENT].

10 [(a)] The commissioner [department] shall adopt rules regarding  
11 only the minimum insurance requirements for the operation of tow  
12 trucks and minimum safety standards regarding the operation of tow  
13 trucks.

14 [~~(b)--The-department--shall--impose--fees--for--the--original~~  
15 ~~registration--and--renewal--registration-of-all-tow-trucks-operated~~  
16 ~~for-compensation--The-department-shall-set--the--fees--in--amounts~~  
17 ~~that--are--reasonable--and--necessary--to--cover--the--costs-of-the~~  
18 ~~administration-of-this-Act-~~

19 [~~(c)--The-department-shall-prescribe--application--forms--for~~  
20 ~~original-and-renewal-certificates-of-registration-~~]

21 SECTION 2.53. Section 4(b), Chapter 1135, Acts of the 70th  
22 Legislature, Regular Session, 1987 (Article 6687-9b, Vernon's Texas  
23 Civil Statutes), is amended to read as follows:

24 (b) The commissioner [department] shall adopt rules relating  
25 to the identification requirement imposed under this section.

26 SECTION 2.54. Section 6, Chapter 1135, Acts of the 70th  
27 Legislature, Regular Session, 1987 (Article 6687-9b, Vernon's Texas

1 Civil Statutes), is amended to read as follows:

2 Sec. 6. RENEWAL. [{a}] A certificate of registration is  
3 valid for the period set by the commission [one-year] and may be  
4 renewed by paying to the commissioner [annually--on-or-before  
5 February-1-on-payment-of] the required renewal fee.

6 [{b}--If-a-tow-truck-owner-fails-to-renew-the-registration-by  
7 the-required-date,-the-owner-may-renew-the-registration-on--payment  
8 of--the--renewal--fee--and-a-late-fee-set-by-the-department.--If-an  
9 application-for-renewal-of-the-registration-is-not-submitted-to-the  
10 department-before-the-31st-day-after-the--expiration--date--of--the  
11 registration,-the--registration--may-not-be-renewed.--To-reinstate  
12 the-certificate-of-registration,-the-owner--must--comply--with--the  
13 requirements-for-an-original-certificate-]

14 SECTION 2.55. Chapter 1135, Acts of the 70th Legislature,  
15 Regular Session, 1987 (Article 6687-9b, Vernon's Texas Civil  
16 Statutes), is amended by adding Section 6A to read as follows:

17 Sec. 6A. CONTINUING EDUCATION. The commissioner may  
18 recognize, prepare, or administer continuing education programs for  
19 persons regulated under this Act. Participation in the programs is  
20 voluntary.

21 SECTION 2.56. Sections 7(a) and (b), Chapter 1135, Acts of  
22 the 70th Legislature, Regular Session, 1987 (Article 6687-9b,  
23 Vernon's Texas Civil Statutes), are amended to read as follows:

24 (a) The commissioner [department] may deny, suspend, revoke,  
25 or reinstate a certificate of registration.

26 (b) The commissioner [department] shall adopt rules  
27 establishing the procedures for denial, suspension, revocation, or

1 reinstatement of a certificate of registration for failure to  
2 follow the insurance and minimum safety requirements established by  
3 the commissioner [~~department~~].

4 SECTION 2.57. Section 2, Texas Boxing and Wrestling Act  
5 (Article 8501-1, Vernon's Texas Civil Statutes), is amended to read  
6 as follows:

7 Sec. 2. PURPOSE. It is the legislature's intent to improve  
8 the general welfare and safety of the citizens of this state. The  
9 legislature finds that the boxing [~~and-wrestling~~] industry in this  
10 state should be regulated in order to protect the best interest of  
11 both contestants and the public, and it is the responsibility of  
12 the state to provide for the protection of the contestants and the  
13 public through the imposition of certain regulations on the boxing  
14 [~~and--wrestling~~] industry and to impose a gross receipts tax upon  
15 the proceeds obtained from boxing and wrestling performances to  
16 finance said regulation. The legislature finds this to be the most  
17 economical and efficient means of dealing with this problem and  
18 serving the public interest. Accordingly, this Act shall be  
19 liberally construed and applied to promote its underlying policies  
20 and purposes.

21 SECTION 2.58. Section 3, Texas Boxing and Wrestling Act  
22 (Article 8501-1, Vernon's Texas Civil Statutes), is amended to read  
23 as follows:

24 Sec. 3. DEFINITIONS. Whenever used in this Act, unless the  
25 context otherwise requires, the following words and terms have the  
26 following meanings:

27 (1) [~~{a}~~] "Commissioner" means the commissioner of

1 licensing and regulation [~~the--Texas--Department--of--Labor--and~~  
2 ~~Standards~~] or his designated representative.

3 (2) [(b)] "Department" means the Texas Department of  
4 Licensing and Regulation [~~Labor-and-Standards~~].

5 (3) [(e)] "Person" includes an individual,  
6 association, partnership, or corporation.

7 (4) [(d)] "Professional boxer [~~or-wrestler~~]" means a  
8 person to be licensed by the commissioner [~~department~~] who competes  
9 for a money prize, purse, or compensation in a boxing [~~or~~  
10 ~~wrestling~~] contest, exhibition, or match held within the State of  
11 Texas.

12 (5) [(e)] "Exhibition" means a demonstration of boxing  
13 or wrestling skills.

14 (6) [(f)] "Boxing" [~~as-used-in-the--Texas--Boxing--and~~  
15 ~~Wrestling-Act~~] includes kickboxing, a form of boxing in which blows  
16 are delivered with any part of the arm below the shoulder,  
17 including the hand, and any part of the leg below the hip,  
18 including the foot.

19 (7) [(g)] "Judge" means a person to be licensed by the  
20 commissioner [~~department~~] who is at ringside during a boxing [~~or~~  
21 ~~wrestling~~] match and who has the responsibility of scoring the  
22 performance of the participants in the match.

23 (8) [(h)] "Referee" means a person to be licensed by  
24 the commissioner [~~department~~] who has the general supervision of a  
25 boxing [~~and-wrestling~~] match or exhibition and is present inside of  
26 the ring during the match or exhibition.

27 (9) "Boxing promoter" [(i)--"~~Premeter~~"] means a person

1 to be licensed by the department who arranges, advertises, or  
2 conducts a boxing [~~ex-wrestling~~] contest, match, or exhibition.

3 (10) "Wrestling promoter" means a person to be  
4 registered with the secretary of state who arranges, advertises, or  
5 conducts a wrestling contest, match, or exhibition.

6 SECTION 2.59. Section 4, Texas Boxing and Wrestling Act  
7 (Article 8501-1, Vernon's Texas Civil Statutes), is amended to read  
8 as follows:

9 Sec. 4. ENFORCEMENT RESPONSIBILITY. (a) The department  
10 shall have the sole jurisdiction and authority to enforce the  
11 provisions of this Act, and the commissioner shall investigate any  
12 allegations of activity which may violate the provisions of this  
13 Act.

14 (b) [~~(a)~~] The commissioner is authorized to enter at  
15 reasonable times and without advance notice any place of business  
16 or establishment where said alleged illegal activity may occur.

17 (c) [~~(b)~~] The commissioner is authorized to promulgate rules  
18 and regulations and hold administrative hearings in accordance with  
19 the Administrative Procedure and Texas Register Act (Article  
20 6252-13a, Vernon's Texas Civil Statutes). The commissioner shall  
21 promulgate any and all reasonable rules and regulations which may  
22 be necessary for the purpose of enforcing the provisions of this  
23 Act. The commissioner is authorized to promulgate rules and  
24 regulations governing professional kickboxing contests or  
25 exhibitions, which shall be fought on the basis of the best efforts  
26 of the contestants. The commissioner shall have the power and  
27 authority to revoke or suspend the license or permit of any judge,



1 boxer, [~~wrestler~~] manager, referee, timekeeper, second, or boxing  
2 promoter for violations of any rule or regulation promulgated  
3 pursuant to this Act or for the violation of any provision of this  
4 Act, and [he] may deny an application for a license when the  
5 applicant does not possess the requisite qualifications.

6 (d) [~~(c)~~] The commissioner shall have the power and  
7 authority to hold a hearing regarding allegations that any person  
8 has violated or failed to comply with the provisions of this Act.  
9 In addition to the denial, revocation, or suspension of a license,  
10 the commissioner may order the forfeiture of the purse of any  
11 boxer[~~-wrestler~~] or manager in an amount not to exceed \$1,000 for  
12 the violation of any rule or regulation promulgated pursuant to the  
13 Act or for the violation of any provision of this Act, and said  
14 money shall be deposited to the credit of the General Revenue Fund  
15 of the State of Texas.

16 (e) [~~(d)~~] In the conduct of any administrative hearing held  
17 pursuant to this Act, the commissioner may administer oaths to  
18 witnesses, receive evidence, and issue subpoenas and subpoenas  
19 duces tecum to compel the attendance of witnesses and the  
20 production of papers and documents related to matters under  
21 investigation. Administrative hearings shall be held in conformity  
22 with the Administrative Procedure and Texas Register Act (Article  
23 6252-13a, Vernon's Texas Civil Statutes).

24 SECTION 2.60. Sections 7(a) and (c), Texas Boxing and  
25 Wrestling Act (Article 8501-1, Vernon's Texas Civil Statutes), are  
26 amended to read as follows:

27 (a) The promoting, conducting, or maintaining of boxing [and

1    ~~wrestling~~] matches, contests, or exhibitions when conducted by  
2    educational institutions, Texas National Guard Units, or amateur  
3    athletic organizations duly recognized by the commissioner shall be  
4    exempt from the licensing and bonding provisions of this Act  
5    provided that none of the participants in such contests or  
6    exhibitions receive a money remuneration, purse, or prize for their  
7    performance or services therein.

8            (c) When an admission fee is charged by any person  
9    conducting or sponsoring an amateur boxing and wrestling contest,  
10   match, or exhibition, except those amateur events exempted in  
11   Section 7(b) herein, the gross receipts tax hereinafter provided in  
12   Section 11 of this Act shall apply and must be paid by the  
13   sponsoring person. In addition, amateur boxing [~~er-wrestling~~]  
14   contests wherein an admission fee is charged shall be conducted  
15   under the following conditions:

16            (1) The commissioner must approve the contest, match,  
17   or exhibition at least seven days in advance of the event.

18            (2) All entries shall be filed with the amateur  
19   organization at least three days in advance of the event.

20            (3) The amateur organization shall determine the  
21   amateur standing of all contestants.

22            (4) The amateur contest, match, or exhibition shall be  
23   subject to the supervision of the commissioner, and all profits  
24   derived from such contests shall be used in the development of  
25   amateur athletics.

26            (5) Only referees and judges licensed by the  
27   commissioner may participate in amateur contests, matches, or

1 exhibitions.

2 (6) All contestants shall be examined by a licensed  
3 physician within a reasonable time prior to the event, and a  
4 licensed physician shall be in attendance at the ringside during  
5 the entire event.

6 (7) All professional boxers [~~and-wrestlers~~] licensed  
7 under this Act are prohibited from participating in any capacity  
8 during an amateur contest, match, or exhibition.

9 SECTION 2.61. Section 8, Texas Boxing and Wrestling Act  
10 (Article 8501-1, Vernon's Texas Civil Statutes), is amended to read  
11 as follows:

12 Sec. 8. PROMOTERS. (a) A [No] person may not [shall] act  
13 as a ~~boxing~~ promoter [~~ef--either-boxing-or-wrestling~~] until the  
14 person [he] has been licensed by the department under [pursuant-to]  
15 this Act. A person may not act as a wrestling promoter until the  
16 person has registered with the secretary of state.

17 (b) The application for a boxing promoter's license shall be  
18 made upon a form furnished by the commissioner and shall be  
19 accompanied by the [an-annual] license fee. The [and-the] license  
20 [~~er--registration~~] fee shall be \$20 for a Boxing Promoter's License  
21 [~~and-\$20-for-a-Wrestling-Promoter's--License~~] in a city with a  
22 population not exceeding 10,000; \$50 in cities with a population of  
23 10,001 to 25,000, inclusive; \$100 in cities with a population of  
24 25,001 to 100,000, inclusive; \$200 in cities with a population of  
25 100,001 to 250,000, inclusive; and \$300 in a city above 250,001  
26 inhabitants. The application for a boxing promoter's license shall  
27 be accompanied by a surety bond subject to the approval of the

1 commissioner and conditioned on ~~[for]~~ the payment of the tax  
2 ~~[hereby]~~ imposed under Section 11 of this Act. The commissioner  
3 shall fix the sum of the surety bond, but the sum may not be less  
4 than \$300.

5 (c) The registration of a wrestling promoter shall be made  
6 on a form furnished by the secretary of state and shall be  
7 accompanied by the registration fee set by the secretary of state  
8 in an amount reasonably necessary to cover the administrative costs  
9 of registration. The registration application shall be accompanied  
10 by a \$5,000 surety bond to be filed with the secretary of state and  
11 conditioned on the payment of the tax imposed under Section 11 of  
12 this Act.

13 (d) A ~~[The]~~ surety bond shall be issued by a company  
14 authorized to do business in Texas and shall be in conformity with  
15 the Insurance Code.

16 (e) A ~~[The]~~ surety bond shall be to the state for the  
17 use by the state or any political subdivision thereof who  
18 establishes liability against a boxing or wrestling promoter for  
19 damages, penalties, taxes, or expenses resulting from promotional  
20 activities conducted within the State of Texas.

21 (f) A ~~[The]~~ bond shall be open to successive claims up  
22 to the amount of face value, and a new bond must be filed each  
23 year. The bonding company is required to provide written  
24 notification to the department at least 30 days prior to the  
25 cancellation of the bond.

26 SECTION 2.62. Sections 9(a) and (b), Texas Boxing and  
27 Wrestling Act (Article 8501-1, Vernon's Texas Civil Statutes), are

1 amended to read as follows:

2 (a) No person shall act as a professional boxer [~~er~~  
3 ~~wrestler~~], manager of a professional boxer [~~er-wrestler~~], referee,  
4 judge, second, timekeeper, or matchmaker until he has been licensed  
5 pursuant to this Act.

6 (b) The application for a license shall be made upon a form  
7 furnished by the commissioner and shall be accompanied by the [an  
8 ~~annual~~] license fee. [as-fellows-

9	[ <del>1</del> ]-boxer	----	\$15
10	[ <del>2</del> ]-wrestler	----	\$15
11	[ <del>3</del> ]-manager	----	\$75
12	[ <del>4</del> ]-matchmaker	----	\$75
13	[ <del>5</del> ]-judge	----	\$15
14	[ <del>6</del> ]-referee	----	\$25
15	[ <del>7</del> ]-second	----	\$10
16	[ <del>8</del> ]-timekeeper	----	\$10]

17 SECTION 2.63. Section 10, Texas Boxing and Wrestling Act  
18 (Article 8501-1, Vernon's Texas Civil Statutes), is amended by  
19 amending Subsection (a) and by adding Subsection (c) to read as  
20 follows:

21 (a) The commissioner is authorized to promulgate rules and  
22 regulations setting forth reasonable qualifications for an  
23 applicant [~~applicants~~] seeking a license [~~licenses~~] as a boxing  
24 promoter, manager, matchmaker, professional boxer [~~er--wrestler~~],  
25 judge, referee, second, or timekeeper.

26 (c) The commissioner may waive any license requirement for  
27 an applicant with a valid license from another state with which

1 this state has a reciprocity agreement.

2 SECTION 2.64. The Texas Boxing and Wrestling Act (Article  
3 8501-1, Vernon's Texas Civil Statutes) is amended by adding Section  
4 10A to read as follows:

5 Sec. 10A. CONTINUING EDUCATION PROGRAMS. The commissioner  
6 may recognize, prepare, or administer continuing education programs  
7 for licensees. Participation in the programs is voluntary.

8 SECTION 2.65. Section 11, Texas Boxing and Wrestling Act  
9 (Article 8501-1, Vernon's Texas Civil Statutes), is amended to read  
10 as follows:

11 Sec. 11. GROSS RECEIPTS TAX. (a) Any person who conducts a  
12 boxing [~~er-wrestling~~] match, contest, or exhibition wherein an  
13 admission fee is charged shall furnish to the department within 72  
14 hours after the termination of the event a duly verified report on  
15 a form furnished by the department showing the number of tickets  
16 sold, prices charged, and amount of gross receipts obtained from  
17 the event. A cashier's check or money order made payable to the  
18 State of Texas in the amount of three percent of the total gross  
19 receipts of the event shall be attached to the verified report.

20 (b) Any person who charges an admission fee for exhibiting a  
21 simultaneous telecast of any live, spontaneous, or current boxing  
22 [~~er-wrestling~~] match, contest, or exhibition on a closed circuit  
23 telecast must possess a boxing promoter's license issued pursuant  
24 to this Act and must obtain a permit for each closed circuit  
25 telecast shown in Texas. The [~~three-percent~~] gross receipts tax  
26 described in Section 11(a) herein is applicable to said telecast,  
27 and the boxing promoter shall furnish to the department within 72

1 hours after the event a duly verified report on a form furnished by  
2 the department showing the number of tickets sold, prices charged,  
3 and amount of gross receipts obtained from the event. A cashier's  
4 check or money order made payable to the State of Texas in the  
5 amount of [~~three-percent-of~~] the tax due [~~total-gross-receipts-of~~  
6 ~~the-event~~] shall be attached to the verified report.

7 (c) A tax is imposed on a person who conducts a wrestling  
8 match, contest, or exhibition, including a simultaneous telecast of  
9 a match, contest, or exhibition, on the person's gross receipts  
10 from those admission fees in the amount of three percent of the  
11 gross receipts. The gross receipts tax imposed by this subsection  
12 shall be collected at least quarterly. The comptroller shall  
13 prescribe by rule the manner in which the gross receipts tax  
14 imposed under this subsection is collected, and may adopt other  
15 rules as necessary to implement this subsection.

16 (d) Revenue obtained [~~by--the--department~~] from the [~~three~~  
17 ~~percent~~] gross receipts taxes imposed under this section [~~tax~~]  
18 shall be deposited to the credit of the General Revenue Fund.

19 [~~{d}--The--admissions-tax-provided-in-Chapter-217-Title-122A,~~  
20 ~~Taxation--General,--Revised--Civil--Statutes--of--Texas,--1925,--as~~  
21 ~~amended,--shall-not-be-applicable-to-said-telecast.~~ ]

22 SECTION 2.66. Section 12, Texas Boxing and Wrestling Act  
23 (Article 8501-1, Vernon's Texas Civil Statutes), is amended to read  
24 as follows:

25 Sec. 12. ARREST AND CONVICTION RECORDS. The Department of  
26 Public Safety shall upon request supply to the Texas Department of  
27 Licensing and Regulation [~~Labor-and-Standards~~] any available arrest

1 and conviction records of individuals applying for or holding any  
2 license under this Act.

3 SECTION 2.67. Section 1(6), Chapter 320, Acts of the 64th  
4 Legislature, Regular Session, 1975 (Article 8700, Vernon's Texas  
5 Civil Statutes), is amended to read as follows:

6 (6) "Commissioner" means the commissioner of licensing  
7 and regulation [~~Commissioner-of-the-Texas-Department-of-Labor-and~~  
8 ~~Standards~~].

9 SECTION 2.68. Sections 3(f) and (h), Chapter 320, Acts of  
10 the 64th Legislature, Regular Session, 1975 (Article 8700, Vernon's  
11 Texas Civil Statutes), are amended to read as follows:

12 (f) A person who establishes his eligibility for an  
13 auctioneer's license may apply to the commissioner for a license  
14 examination. The application must be accompanied by the [an]  
15 examination fee [~~of-\$25~~]. On receipt of an examination application  
16 with the required fee, the commissioner shall furnish the applicant  
17 with study materials and references on which the examination will  
18 be based and a schedule specifying the dates and places the  
19 examination will be offered. The applicant may take the  
20 examination at any scheduled offering within 90 days after receipt  
21 of the study materials. If an applicant fails the qualifying  
22 examination, he may reapply to take the license examination again.  
23 However, if the applicant fails the examination twice within a  
24 one-year period, he must wait one year to reapply.

25 (h) A license issued under this Act shall [must] be issued  
26 for the period set by the commission [~~one-year,-and-it--expires--on~~  
27 ~~the--anniversary--of--issuance--unless--it--is--affected-by-actions~~



1 resulting-from-a-hearing-conducted-according-to-this-Act-or--unless  
2 enjoined--by--actions--of--a--court-of-competent-jurisdiction--Any  
3 license-issued-under-this-Act-may-be-renewed-within-30--days--after  
4 the--expiration-date-on-written-request-by-the-licensee-and-payment  
5 of-the-required-license-fee].

6 SECTION 2.69. Chapter 320, Acts of the 64th Legislature,  
7 Regular Session, 1975 (Article 8700, Vernon's Texas Civil  
8 Statutes), is amended by adding Sections 3A and 3B to read as  
9 follows:

10 Sec. 3A. NOTICE OF EXAMINATION RESULTS. (a) Not later than  
11 the 30th day after the date on which an examination is administered  
12 under this Act, the commissioner shall notify each examinee of the  
13 results of the examination. However, if an examination is graded  
14 or reviewed by a national testing service, the commissioner shall  
15 notify examinees of the results of the examination not later than  
16 the 14th day after the date on which the commissioner receives the  
17 results from the testing service. If the notice of examination  
18 results graded or reviewed by a national testing service will be  
19 delayed for longer than 90 days after the examination date, the  
20 commissioner shall notify the examinee of the reason for the delay  
21 before the 90th day.

22 (b) If requested in writing by a person who fails the  
23 examination, the commissioner shall furnish the person with an  
24 analysis of the person's performance on the examination.

25 Sec. 3B. CONTINUING EDUCATION PROGRAMS. The commissioner  
26 may recognize, prepare, or administer continuing education programs  
27 for licensees. Participation in the programs is voluntary.

1           SECTION 2.70.   Section 2, Air Conditioning and Refrigeration  
2 Contractor License Law (Article 8861, Vernon's Texas Civil  
3 Statutes), is amended by amending Subdivisions (5) and (7) and by  
4 adding Subdivisions (12) and (13) to read as follows:

5           (5) "Commissioner" means the commissioner of licensing  
6 and regulation [~~the-Texas-Department-of-Labor-and-Standards~~].

7           (7) "Environmental air conditioning maintenance work"  
8 means repair work and all other work required for the continued  
9 normal performance of an environmental air conditioning system.  
10 The term does not include the installation of a total replacement  
11 of the system or the installation of boilers or pressure vessels  
12 that must be installed by licensed persons pursuant to rules and  
13 regulations adopted by the commissioner [~~promulgated-by--the--Texas~~  
14 ~~Department---of---Labor--and--Standards~~] under the Texas boiler  
15 inspection law, Chapter 436, Acts of the 45th Legislature, Regular  
16 Session, 1937 (Article 5221c, Vernon's Texas Civil Statutes).

17           (12) "Department" means the Texas Department of  
18 Licensing and Regulation.

19           (13) "Commission" means the Texas Commission of  
20 Licensing and Regulation.

21           SECTION 2.71.   Sections 3(g) and (k), Air Conditioning and  
22 Refrigeration Contractor License Law (Article 8861, Vernon's Texas  
23 Civil Statutes), are amended to read as follows:

24           (g) The department [~~commissioner~~] may employ the personnel  
25 necessary to implement this Act. The department [~~commissioner~~]  
26 shall employ at least two full-time air conditioning and  
27 refrigeration contractors to serve as examiners.

1           (k) The department [~~commissioner~~] shall publish annually a  
2 directory of the persons licensed under this Act. The department  
3 [~~commissioner~~] may sell the directory on payment of a reasonable  
4 fee set by the commission [~~commissioner~~]. The fees collected  
5 under this subsection shall be appropriated to the department for  
6 use in the administration of this Act.

7           SECTION 2.72. Sections 3A(a) and (h), Air Conditioning and  
8 Refrigeration Contractor License Law (Article 8861, Vernon's Texas  
9 Civil Statutes), are amended to read as follows:

10          (a) The Air Conditioning and Refrigeration Contractors  
11 Advisory Board is created to advise the commissioner in adopting  
12 rules[~~7-setting-fees7~~] and enforcing and administering this Act and  
13 to advise the commission in setting fees.

14          (h) The advisory board members serve without compensation.  
15 A member is entitled to reimbursement for actual and necessary  
16 expenses incurred in performing functions as a member of the  
17 advisory board, subject to any applicable limitation on  
18 reimbursement provided by the General Appropriations Act[~~7-and~~  
19 ~~members-are-not-entitled-to-reimbursement-for-any-expenses-incurred~~  
20 ~~in-performing-duties-under-this-Act~~].

21          SECTION 2.73. Section 4(h), Air Conditioning and  
22 Refrigeration Contractor License Law (Article 8861, Vernon's Texas  
23 Civil Statutes), is amended to read as follows:

24          (h) A license issued under this Act expires at the end of  
25 the license period set by the commission [~~three-years-after-the~~  
26 ~~date-it-was-issued--To-renew-a-license7-the-licensee--must--submit~~  
27 ~~to---the---commissioner---before--the--expiration--date--a--renewal~~

1 application, on a form prescribed by the commissioner, -- accompanied  
2 by -- the renewal fee. -- The commissioner shall notify the licensee of  
3 the expiration date of the license and the amount -- of -- the -- renewal  
4 fee. -- The notice shall be mailed not later than the 30th day before  
5 the expiration date].

6 SECTION 2.74. The Air Conditioning and Refrigeration  
7 Contractor License Law (Article 8861, Vernon's Texas Civil  
8 Statutes) is amended by adding Sections 4A, 4B, 4C, and 4D to read  
9 as follows:

10 Sec. 4A. NOTICE OF EXAMINATION RESULTS. (a) Not later than  
11 the 30th day after the date on which an examination is administered  
12 under this Act, the commissioner shall notify each examinee of the  
13 results of the examination. However, if an examination is graded  
14 or reviewed by a national testing service, the commissioner shall  
15 notify examinees of the results of the examination not later than  
16 the 14th day after the date on which the commissioner receives the  
17 results from the testing service. If the notice of examination  
18 results graded or reviewed by a national testing service will be  
19 delayed for longer than 90 days after the examination date, the  
20 commissioner shall notify the examinee of the reason for the delay  
21 before the 90th day.

22 (b) If requested in writing by a person who fails the  
23 examination, the commissioner shall furnish the person with an  
24 analysis of the person's performance on the examination.

25 Sec. 4B. CONTINUING EDUCATION PROGRAMS. The commissioner  
26 may recognize, prepare, or administer continuing education programs  
27 for licensees. Participation in the programs is voluntary.

1       Sec. 4C. LICENSE BY RECIPROCITY. The commissioner may waive  
2 any license requirement for an applicant with a valid license from  
3 another state with which this state has a reciprocity agreement.

4       Sec. 4D. TEMPORARY LICENSE. (a) The commissioner, by rule,  
5 may provide for the issuance of a temporary license to perform air  
6 conditioning and refrigeration contracting.

7       (b) The commissioner may issue a temporary license to an  
8 applicant who applies to the commissioner on a form prescribed by  
9 the commissioner and pays the required fees.

10                   ARTICLE 3. PROGRAMS TRANSFERRED TO

11                               OTHER STATE AGENCIES

12       SECTION 3.01. Article 5155, Revised Statutes, is amended to  
13 read as follows:

14       Art. 5155. PAY DAYS

15       Sec. 1. DEFINITIONS. In this article:

16               (1) "Person" means an individual, association,  
17 corporation, or other legal entity.

18               (2) "Employer" means a person that employs one or more  
19 employees. The term does not include the state or a political  
20 subdivision of the state.

21               (3) "Employee" means an individual who is employed by  
22 an employer for compensation. The term does not include:

23                       (A) the spouse of the employer; or

24                       (B) a person related within the first or second  
25 degree by consanguinity or affinity to either the employer or the  
26 employer's spouse.

27               (4) "Commission" means the Texas Employment

1 by the employee in writing.

2 Sec. 3. DEDUCTIONS FROM WAGES. An employer may not withhold  
3 or divert any part of an employee's wages unless the employer:

4 (1) is ordered to do so by a court of competent  
5 jurisdiction;

6 (2) is authorized to do so by state or federal law; or

7 (3) has written authorization from the employee to  
8 deduct a part of the wages for a lawful purpose.

9 Sec. 4. WAGE CLAIM; HEARING; ADMINISTRATIVE PENALTY. (a)  
10 An employee who is not paid at the time or in the manner prescribed  
11 by this article may file a written wage claim with the commission  
12 on a form prescribed by the commission. The employee must file the  
13 wage claim with the commission not later than one year after the  
14 date the wages in question were due for payment.

15 (b) The commission shall analyze each wage claim filed under  
16 Subsection (a) of this section and shall make an initial  
17 determination of the validity of the claim based on the information  
18 provided by the claimant. The analysis and determination shall be  
19 made not later than the 30th day after the date the wage claim is  
20 received by the commission. If the commission determines that the  
21 claim is valid, it shall notify the employer in writing by mail of  
22 the claim and the amount in question. The employer may respond to  
23 the claim by filing a written response with the commission not  
24 later than the 14th day after the date the notice was mailed by the  
25 commission.

26 (c) If the employer disputes the wage claim or fails to  
27 respond in a timely manner, the commission shall investigate the

1 semimonthly must consist as nearly as possible of an equal number  
2 of days.

3 (b) An employee who is absent on the day fixed for payment,  
4 or who for any other reason is not paid on that day, must be paid  
5 on the employee's request.

6 (c) An employee who is discharged from employment must be  
7 paid in full not later than the sixth day after the date the  
8 employee is discharged.

9 (d) An employee who leaves employment other than by  
10 discharge must be paid in full not later than the next regularly  
11 scheduled date fixed for payment.

12 (e) Each employer shall pay wages to an employee in United  
13 States currency or by a written instrument issued by the employer  
14 that is negotiable on demand at full face value for United States  
15 currency unless the employee has agreed in writing to receive part  
16 or all of the wages in kind or in another form. Payment by a  
17 written instrument that is not negotiable due to insufficient funds  
18 does not constitute payment of wages for purposes of this article.

19 (f) Except as provided by Subsection (g) of this section, an  
20 employer shall pay the wages by sending them to the employee by  
21 registered mail or by delivering them to the employee either at the  
22 employee's normal place of employment during normal employment  
23 hours or at a place and hour mutually agreed on by the employer and  
24 employee.

25 (g) An employer may deliver wages paid under this article to  
26 a person that is designated by the employee in writing or may  
27 deliver the wages to the employee by any reasonable means requested

1       (g) In determining the amount of an administrative penalty  
2 assessed under this section, the hearings officer shall consider:

3               (1) the seriousness of the violation;

4               (2) the history of previous violations;

5               (3) the amount necessary to deter future violations;

6 and

7               (4) any other appropriate matters.

8       (h) If it is determined by the hearings officer that a  
9 violation has occurred, the hearings officer shall enter a written  
10 order to that effect, which shall be the final order of the  
11 commission. The hearings officer shall notify the parties in  
12 writing of the decision, the amount of any penalty assessed, and  
13 the parties' right to judicial review of the commission's order.  
14 Either party may bring an action in district court to appeal the  
15 final order. The action must be filed not later than the 60th day  
16 after the date the final order is entered. An appeal under this  
17 section is governed by the substantial evidence rule.

18       (i) Not later than the 60th day after the date the  
19 commission's order is final, the party assessed a penalty shall  
20 either remit the penalty to the commission or, if the party files a  
21 petition for judicial review contesting the fact of the violation  
22 or the amount assessed, forward the amount assessed to the  
23 commission for deposit in an escrow account. Failure to forward  
24 the amount assessed within the specified period constitutes a  
25 waiver of the right to judicial review.

26       (j) If, after judicial review, the penalty is reduced or is  
27 not assessed, the commission shall remit the appropriate amount to



1 claim. After investigation, the commission shall issue an order  
2 either dismissing the complaint or requiring the payment of the  
3 wages.

4 (d) The commission shall notify each of the parties of its  
5 determination in writing. Either party may request a hearing to  
6 contest the determination. A party must make the request for a  
7 hearing in writing not later than the 14th day after the date the  
8 commission determination notice is mailed.

9 (e) A notice regarding an administrative hearing conducted  
10 under this section must be mailed by the commission not later than  
11 the 21st day after the date the request for the hearing is received  
12 by the commission. The hearing shall be conducted by a commission  
13 hearings officer not later than the 14th day after the date the  
14 commission hearing notice is mailed. The hearing is subject to the  
15 hearings procedures used by the commission in the determination of  
16 a claim for unemployment compensation benefits and is not subject  
17 to the Administrative Procedure and Texas Register Act (Article  
18 6252-13a, Vernon's Texas Civil Statutes).

19 (f) The hearings officer may modify, affirm, or rescind a  
20 determination order. If the hearings officer determines that the  
21 employer acted in bad faith in not paying the disputed wages at the  
22 time or in the manner prescribed by this article, the hearings  
23 officer may assess the employer an administrative penalty not to  
24 exceed \$1,000 for each payday missed. If the hearings officer  
25 determines that the complaint is frivolous, the hearings officer  
26 may assess the complainant an administrative penalty not to exceed  
27 \$1,000.

1 of contributions to the Unemployment Compensation Fund under the  
2 provisions of the Texas Unemployment Compensation Act, as amended,  
3 are exempt from the provisions of this Act.

4 Upon written request, the Texas Employment Commission  
5 [~~Commissioner-of-Labor-and-Standards~~] shall furnish to any person  
6 applying therefor, a certificate stating whether or not a specified  
7 employer is an employer in this state who is liable for the payment  
8 of contributions to the Unemployment Compensation Fund under the  
9 provisions of the Texas Unemployment Compensation Act. [~~The--Texas~~  
10 ~~Employment--Commission--shall--provide--the-Department-of-Labor-and~~  
11 ~~Standards-with-such-certificate-upon-request-by-the--Department--of~~  
12 ~~Labor--and--Standards-~~] The certificates shall be admissible in  
13 evidence in any cause of action brought by an employee or employees  
14 under the provisions of Section 13 of this Act, and, in the absence  
15 of evidence to the contrary, it shall be presumed that the facts  
16 stated in such certificates are true and the certificate shall be  
17 conclusive as to the issue of whether or not the named employer is  
18 exempt from the provisions of this Act under Section 4(c). The  
19 Texas Employment Commission [~~Commissioner-of-Labor--and--Standards~~]  
20 may require payment of a fee not to exceed \$5 for the issuance of a  
21 certificate as provided in this section and all fees collected for  
22 issuing certificates shall be deposited in the State Treasury to  
23 the credit of the General Revenue Fund. [~~The--issuance-of-a~~  
24 ~~certificate--by--the--Texas--Employment--Commission--under--this~~  
25 ~~subsection--and--reimbursement--for--the--administrative--expenses~~  
26 ~~incurred-by--that--commission--in--providing--the--certificate--are~~  
27 ~~subject--to--the--terms--of--an--interagency-agreement-entered-into~~

1 the party assessed the penalty, plus accrued interest at a rate  
2 equal to the rate charged on loans to depository institutions by  
3 the New York Federal Reserve Bank. Interest under this section  
4 shall be paid for the period beginning on the date the assessed  
5 penalty is paid to the commission and ending on the date the  
6 penalty is remitted.

7 (k) The attorney general may bring an action in a court of  
8 appropriate jurisdiction to enforce an administrative penalty  
9 assessed under this section.

10 (l) A penalty collected under this section shall be  
11 deposited in the unemployment compensation special administration  
12 fund.

13 Sec. 5. RULES. The commission may adopt rules as necessary  
14 to implement this article. [ (a) -- A person who employs one or more  
15 employees in this state shall pay the employees who are exempt from  
16 the overtime pay provisions of the Fair Labor Standards Act of 1938  
17 at least once per month and shall pay all other employees at least  
18 semimonthly.

19 [ (b) -- In this article, "person" means an individual,  
20 corporation, organization, partnership, association, or any other  
21 private legal entity. The term does not include the state or a  
22 political subdivision of the state. ]

23 SECTION 3.02. Section 4(c), Texas Minimum Wage Act (Article  
24 5159d, Vernon's Texas Civil Statutes), is amended to read as  
25 follows:

26 (c) Except with respect to employment of persons in  
27 agriculture, employers who are not subject to liability for payment

1           Sec. 2. DEFINITIONS. In this Act:

2                   (1) "Child" means an individual under 18 years of age.

3                   (2) "Commission"       [~~"Commissioner"~~-----means-----the  
4 ~~commissioner-of-labor-and-standards-~~

5                           [~~{3}~~--"Department"] means the Texas Employment  
6 Commission [~~Department-of-Labor-and-Standards~~].

                  (3) [~~{4}~~] "Person" means an individual, corporation,  
8 partnership, unincorporated association, or other legal entity.

9           SECTION 3.06. Section 3, Chapter 531, Acts of the 67th  
10 Legislature, Regular Session, 1981 (Article 5181.1, Vernon's Texas  
11 Civil Statutes), is amended to read as follows:

12           Sec. 3. MINIMUM AGE. Except as provided by this Act or by a  
13 rule of the commission [~~commissioner-of--labor--and--standards~~], a  
14 person commits an offense if that person employs a child under 14  
15 years of age.

16           SECTION 3.07. Section 4, Chapter 531, Acts of the 67th  
17 Legislature, Regular Session, 1981 (Article 5181.1, Vernon's Texas  
18 Civil Statutes), is amended to read as follows:

19           Sec. 4. RULEMAKING. The commission [~~commissioner--of--labor~~  
20 ~~and--standards~~] may adopt rules necessary to promote the purpose of  
21 this Act. Except as expressly authorized by this Act, a rule may  
22 not permit the employment of a child under 14 years of age.

23           SECTION 3.08. Section 6, Chapter 531, Acts of the 67th  
24 Legislature, Regular Session, 1981 (Article 5181.1, Vernon's Texas  
25 Civil Statutes), is amended to read as follows:

26           Sec. 6. HARDSHIP.   [~~{a}~~] The commission [~~commissioner~~] may  
27 adopt rules to determine whether a hardship exists in the case of

1 between-the-Texas-Department-of-Labor-and-Standards-and--the--Texas  
2 Employment-Commission- ]

3 SECTION 3.03. Section 7(h), Texas Minimum Wage Act (Article  
4 5159d, Vernon's Texas Civil Statutes), is amended to read as  
5 follows:

6 (h) After the establishment of any piece rate or rates the  
7 order establishing same shall be kept on file in the office of the  
8 commissioner in Austin, Texas, and shall be available for public  
9 inspection. The commissioner shall make copies available to anyone  
10 on request and may charge a reasonable amount to cover the cost of  
11 making and distributing the copies. A copy of each order  
12 establishing a piece rate or rates shall be furnished by the  
13 commissioner to the Texas Employment Commission [Department-of  
14 Labor-and-Standards].

15 SECTION 3.04. Section 15, Texas Minimum Wage Act (Article  
16 5159d, Vernon's Texas Civil Statutes), is amended to read as  
17 follows:

18 Sec. 15. DISSEMINATION OF INFORMATION. The Texas Employment  
19 Commission [Department-of-Labor-and--Standards] shall disseminate  
20 information to the public regarding the provisions of this Act to  
21 the end that both employers and employees in this state will be  
22 fully aware of their respective rights and responsibilities, the  
23 exemptions specified, and the penalties and liabilities which may  
24 be incurred for violations of the provisions of this Act.

25 SECTION 3.05. Section 2, Chapter 531, Acts of the 67th  
26 Legislature, Regular Session, 1981 (Article 5181.1, Vernon's Texas  
27 Civil Statutes), is amended to read as follows:

1 of the 67th Legislature, Regular Session, 1981 (Article 5181.1,  
2 Vernon's Texas Civil Statutes), are amended to read as follows:

3 (a) A child who is at least 14 years of age may apply to the  
4 commission [department] for a certificate of age.

5 (b) When applying for a certificate of age, a child must  
6 present documentary proof of age that the commission [department]  
7 finds necessary.

8 (c) After the commission [department] has approved a child's  
9 documentary proof of age, the commission [department] shall issue  
10 to the child a certificate stating the date of birth of the child.

11 SECTION 3.12. Section 10, Chapter 531, Acts of the 67th  
12 Legislature, Regular Session, 1981 (Article 5181.1, Vernon's Texas  
13 Civil Statutes), is amended to read as follows:

14 Sec. 10. ACTORS. The commission [commissi~~oner~~] by rule may  
15 authorize the employment of a child under 14 years of age as an  
16 actor or performer in a motion picture or in a theatrical, radio,  
17 or television production.

18 SECTION 3.13. Sections 11(a) and (c), Chapter 531, Acts of  
19 the 67th Legislature, Regular Session, 1981 (Article 5181.1,  
20 Vernon's Texas Civil Statutes), are amended to read as follows:

21 (a) This Act does not apply to employment of a child who is:

22 (1) employed in a nonhazardous occupation under the  
23 direct supervision of the child's parent or an adult having custody  
24 of the child in a business or enterprise owned or operated by the  
25 parent or custodian;

26 (2) engaged in delivery of newspapers to the consumer;

27 (3) participating in a school-supervised and

1 an individual child.

2 [~~(b)~~--The--department-may-determine-whether-a-hardship-exists  
3 in-the-case-of-an-individual-child-under-the-rules-adopted--by--the  
4 commissioner-

5 [~~(e)~~] If the commission [department] determines that a  
6 hardship exists in the case of an individual child, Sections 5(a),  
7 (b), and (c) of this Act do not apply in that case.

8 SECTION 3.09. Section 7(a), Chapter 531, Acts of the 67th  
9 Legislature, Regular Session, 1981 (Article 5181.1, Vernon's Texas  
10 Civil Statutes), is amended to read as follows:

11 (a) The commission or its designee [~~commissioner-or-any~~  
12 ~~deputy-or-inspector-of-the-commissioner~~] may, during working hours,  
13 inspect a place where there is good reason to believe a child is  
14 employed and collect information concerning the employment of a  
15 child who works at that place.

16 SECTION 3.10. Sections 8(a) and (b), Chapter 531, Acts of  
17 the 67th Legislature, Regular Session, 1981 (Article 5181.1,  
18 Vernon's Texas Civil Statutes), are amended to read as follows:

19 (a) If the commission determines [~~commissioner--finds~~] that  
20 any occupation is particularly hazardous for the employment of a  
21 child and that occupation has been declared to be hazardous by an  
22 agency of the federal government, the commission [~~commissioner~~] by  
23 rule shall declare that occupation to be hazardous.

24 (b) The commission [~~commissioner~~] by rule may restrict the  
25 employment of children 14 years of age or older in hazardous  
26 occupations.

27 SECTION 3.11. Sections 9(a), (b), and (c), Chapter 531, Acts

1 equipment, and exercise equipment.

2           (3) [~~4~~] "Health spa" means a business primarily  
3 involved in the sale of memberships that provides the members  
4 instruction in a program of physical exercise or provides the  
5 members use of the facilities of the health spa for a program of  
6 physical exercise. The term does not include an organization that  
7 is tax exempt under 26 U.S.C. 501 et seq., a private club owned and  
8 operated by its members, an entity primarily operated for the  
9 purpose of teaching dance or aerobic exercise, an entity primarily  
10 engaged in physical rehabilitation activity related to an  
11 individual's injury or disease, an individual or entity engaged in  
12 an activity authorized under a valid license issued by this state,  
13 or an activity conducted or sanctioned by a school operating under  
14 the Education Code.

15           (4) [~~5~~] "Member" means a person entitled to the  
16 benefits of membership in a health spa.

17           (5) [~~6~~] "Membership" means the status under a  
18 contract between an individual and a health spa that entitles the  
19 individual to the use of services or facilities of the health spa.

20           (6) [~~7~~] "Person" means an individual, corporation,  
21 association, organization, partnership, business trust, trust,  
22 estate, and any other legal entity.

23           (7) [~~8~~] "Prepayment" means a payment for all  
24 services or for the use of facilities made by members of a health  
25 spa before the first day the services or facilities are made  
26 available to the members.

27           (8) [~~9~~] "Purchaser" means a person who purchases a



1 school-administered work-study program approved by the commission  
2 [~~department~~];

3 (4) employed in agriculture during a period of time  
4 when the child is not legally required to be attending school;

5 (5) employed through a rehabilitation program  
6 supervised by a county judge; or

7 (6) engaged in casual nonhazardous employment with  
8 parental consent or the consent of an adult having custody of such  
9 child which will not endanger the safety, health, or well-being of  
10 such child.

11 (c) The commission [~~commissioner~~] by rule may define  
12 nonhazardous casual employment which the commission [~~commissioner~~]  
13 determines is dangerous to the safety, health, or well-being of a  
14 child.

15 SECTION 3.14. Section 6, Health Spa Act (Article 52211,  
16 Vernon's Texas Civil Statutes), is amended to read as follows:

17 Sec. 6. DEFINITIONS. In this Act:

18 (1) "Contract" means an agreement by which one becomes  
19 a member of a health spa.

20 (2) [~~"Department"--means-the-Texas-Department-of-Labor~~  
21 ~~and-Standards-~~

22 [(3)] "Facilities" means equipment, physical  
23 structures, improvements, improvements to leasehold premises, and  
24 other tangible property, real, personal, or mixed, used by a health  
25 spa at each location to conduct its business, including but not  
26 limited to saunas, whirlpool baths, gymnasiums, running tracks,  
27 swimming pools, shower areas, racquetball courts, martial arts

1 shall allow a current member or a prospective purchaser of a  
2 membership to inspect a [the] registration statement on request.

3 (e) The secretary of state [department] may charge each  
4 health spa that files a registration statement [with---the  
5 department] a reasonable fee not to exceed \$100 to cover the cost  
6 of filing. The secretary of state [department] may not require a  
7 health spa to provide information other than that provided in the  
8 registration statement.

9 SECTION 3.16. Sections 9(a) and (d), Health Spa Act (Article  
10 52211, Vernon's Texas Civil Statutes), are amended to read as  
11 follows:

12 (a) Except as provided by Subsection (e) of this section, a  
13 health spa or its assignee or agent that accepts prepayments for  
14 its memberships shall deposit all of the funds received as  
15 prepayments in an escrow account established with a financial  
16 institution whose accounts are insured by the Federal Deposit  
17 Insurance Corporation or the Federal Savings and Loan Insurance  
18 Corporation, which shall hold the funds as escrow agent for the  
19 benefit of the members that prepay. The health spa shall deposit  
20 prepayments received at least as often as biweekly and shall make  
21 the first deposit not later than the 14th day after the day on  
22 which the spa accepts the first prepayment. Not later than the  
23 14th day after the day on which the first prepayment is received,  
24 the spa shall give the secretary of state [department] a notarized  
25 statement that identifies the financial institution in which the  
26 prepayments are held in escrow and the name in which the account is  
27 held. The prepayments shall be held in escrow until the 30th day

1 health spa membership.

2 (9) [~~10~~] "Seller" means a person who owns or  
3 operates a health spa or who offers for sale the right to use the  
4 facilities or the services of the health spa.

5 (10) [~~11~~] "Services" means programs, plans,  
6 guidance, or instruction that a health spa provides for its  
7 members, including diet planning, exercise instruction, exercise  
8 programs, and instructional classes.

9 SECTION 3.15. Sections 8(a), (d), and (e), Health Spa Act  
10 (Article 52211, Vernon's Texas Civil Statutes), are amended to read  
11 as follows:

12 (a) A health spa shall file a registration statement with  
13 the secretary of state [~~department~~] before offering for sale or  
14 selling memberships in this state. The health spa shall file a  
15 separate registration statement for each location at which the  
16 health spa operates. The registration statement must contain:

17 (1) the name and address of the health spa;

18 (2) the name and address of any person who directly or  
19 indirectly owns or controls 10 percent or more of the outstanding  
20 shares of stock in the health spa;

21 (3) the type of available or proposed facilities and  
22 services offered at that location; and

23 (4) the approximate size of the health spa location  
24 measured in square feet.

25 (d) Each health spa registering under this section shall  
26 maintain a copy of the registration statement filed for each  
27 location in the records [~~files~~] of the health spa. The health spa

1 limited to any unused or unearned portion of such member's dues or  
2 fees. Such a member may bring an action based on the bond and  
3 recover against the surety regardless of the number of claimants or  
4 claims filed against the bond, but the liability of the surety may  
5 not exceed the aggregate amount of the bond. If the claims filed  
6 against the bond exceed the amount of the bond, the surety shall  
7 pay the amount of the bond to the secretary of state [department]  
8 for distribution to the claimants on a pro rata basis. The surety  
9 is relieved of liability under the bond on payment of the amount to  
10 the secretary of state [department].

11 (b) The amount of the security required under Subsection (a)  
12 of this section is [20--percent--of--the--total--value--of--the  
13 prepayments--received--by--the--health--spa--However,--the--amount--of--the  
14 security--may--not--be--less--than] \$20,000 [or--more--than--\$50,000]. If  
15 a claim is paid from the bond or other security deposit, the health  
16 spa must post additional security, not later than the 20th day  
17 after the date on which the claim is paid, to restore the amount of  
18 the security to \$20,000.

19 (c) The health spa shall maintain the bond or other security  
20 deposit in the amount provided in Subsection (b) of this section in  
21 effect for two years after the date on which the health spa ceases  
22 business or until the secretary of state determines that each claim  
23 to which the bond or other security deposit is subject has been  
24 satisfied or foreclosed by law [security--is--filed--with--the  
25 department--Thereafter,--the--health--spa--shall--continuously--maintain  
26 security--in--the--amount--of--\$5,000].

27 (d) [A-health-spa-is-exempt-from-the--security--requirements

1 after the date that the health spa fully opens for business.

2 (d) If the health spa remains open for 30 days after the  
3 date the health spa initially fully opens for business, the health  
4 spa may withdraw the escrowed funds at its discretion if the health  
5 spa files an affidavit with the secretary of state [department]  
6 certifying that all obligations of the health spa for which a lien  
7 could be claimed under Chapter 53, Property Code, have been paid  
8 and if no person is eligible to claim a lien under that chapter  
9 during the period the health spa accepts prepayments.

10 SECTION 3.17. Section 10, Health Spa Act (Article 52211,  
11 Vernon's Texas Civil Statutes), is amended to read as follows:

12 Sec. 10. SECURITY. (a) Not later than [Except-as-provided  
13 by-Subsection-(d)-of-this-section,--on--or--before] the 30th day  
14 before [after] the date a health spa opens a location [its  
15 facilities] for the use of its members, the health spa shall file  
16 with the secretary of state [department] a surety bond issued by a  
17 surety company licensed to do business in this state, or, in lieu  
18 of, and in equal amount to the bond, a security deposit in the form  
19 of a certificate of deposit, letter of credit, or other negotiable  
20 instrument issued by a financial institution in this state whose  
21 deposits are insured by the Federal Deposit Insurance Corporation  
22 or the Federal Savings and Loan Insurance Corporation. The bond[  
23 certificate-of--deposit,--letter--of--credit,] or other security  
24 deposit [instrument] shall be payable in favor of the state and  
25 shall be held for the benefit of any members of the health spa who  
26 suffer financial losses due to the insolvency or cessation of  
27 operation of the health spa. "Financial losses" shall mean and be

1 continuous until cancelled by the surety or terminated by the  
2 health spa only upon giving 90 days prior notice to the secretary  
3 of state [~~department~~] of such cancellation.

4 (4) A surety hereunder shall not be liable for any  
5 claim brought or suit filed against a bond if the claim or filing  
6 of a suit occurs more than two years from the last effective date  
7 of the bond.

8 SECTION 3.18. Section 17(c), Health Spa Act (Article 52211,  
9 Vernon's Texas Civil Statutes), is amended to read as follows:

10 (c) A health spa may not fail or refuse to:

11 (1) file or update the registration statements  
12 [~~statement~~] required by Section 8 of this Act;

13 (2) establish the escrow account required by Section 9  
14 of this Act; or

15 (3) maintain the security required by Section 10 of  
16 this Act in full force and effect.

17 SECTION 3.19. Section 19(a), Health Spa Act (Article 52211,  
18 Vernon's Texas Civil Statutes), is amended to read as follows:

19 (a) If a member is injured as a result of an unlawful act or  
20 practice by the seller, the member may bring an action against the  
21 seller in a court of competent jurisdiction in Travis County, the  
22 county in which the seller resides, the county in which the seller  
23 has his principal place of business, a county in which the seller  
24 is doing business, the county in which the member resides, or the  
25 county in which the transaction occurred. The court may award  
26 actual damages and equitable relief as it considers necessary or  
27 proper. A member may obtain punitive damages in an appropriate

1 of--this--section--if-the-owner-of-the-health-spa-owns-at-least-one  
2 other-spa-in-this-state-which-has-operated-at-one-location--for--at  
3 least--the--two--years-preceding-the-effective-date-of-this-Act-and  
4 against-which-none-of-its--members--have--initiated--litigation--or  
5 filed--a--complaint--with--any-governmental-authority-in-this-state  
6 relating-to-the-failure-to-open-or-the-closing-of-the--health--spa.  
7 An--owner--of--a--health--spa--is--not--subject--to--the--security  
8 requirements-of-this-section-because-of-litigation-or--a--complaint  
9 based--on-the-closing-of-a-health-spa-if-that-closing-was-caused-by  
10 a-fire, flood, or-ether-natural-disaster--and--if--the--closing--is  
11 temporary--and--does-not-exceed-one-month--An-owner-is-not-subject  
12 to-the-security-requirements-of-this-section-because-of--litigation  
13 or-a-complaint-based-on-the-closing-of-a-health-spa-if-that-closing  
14 is--due--to--the--relocation--of-the-spa-to-a-site-not-more-than-10  
15 miles-from-the-original-location-and-if-the--time--elapsed--between  
16 closing--the--spa--at--the--old--location--and-reopening-at-the-new  
17 location-does-not-exceed-one-month.

18 [e] The following provisions shall be applicable to all  
19 bonds issued hereunder:

20 (1) Regardless of the number of years the bond shall  
21 continue in force or the number of premiums payable or paid, the  
22 limit of the surety's liability stated in the bond shall not be  
23 cumulative from year to year or period to period.

24 (2) The surety shall not be liable through a bond for  
25 punitive damages or for civil or criminal penalties assessed  
26 against a health spa, its individual owners, or its employees.

27 (3) The bond written by a surety hereunder shall be

1 camper, recreational vehicle, or similar device designed for  
2 camping.

3 (6) [~~"Commissioner"~~--means--the--commissioner--of--the  
4 Texas--Department--of--Labor--and--Standards--or--that--official's  
5 designee-

6 [~~(7)~~] "Dispose" or "disposition" means a voluntary  
7 transfer of any membership interest or membership right, but does  
8 not include the transfer or release of a real estate lien or of a  
9 security interest.

10 (7) [~~(8)~~] "Home resort" means the camping resort to  
11 which the purchaser has purchased a right of membership. The term  
12 does not include a resort that a purchaser may use as a result of a  
13 reciprocal program among operators.

14 (8) [~~(9)~~] "Membership camping contract" means an  
15 agreement under which a purchaser pays for or becomes obligated to  
16 pay for a membership interest or membership right in a membership  
17 camping resort.

18 (9) [~~(10)~~] "Membership camping contract broker" means  
19 a person who resells a membership camping contract to a new  
20 purchaser on behalf of the former purchaser. The term does not  
21 include a membership camping operator or that person's agent.

22 (10) [~~(11)~~] "Membership camping resort disclosure  
23 statement" means a written statement that includes the information  
24 that is required by Subsection (b) of Section 5 of this Act.

25 (11) [~~(12)~~] "Membership camping resort" means real  
26 property owned or operated by a membership camping operator that is  
27 available for camping by purchasers of a membership right.



1 case.

2 SECTION 3.20. Section 2, Texas Membership Camping Resort Act  
3 (Article 8880, Vernon's Texas Civil Statutes), is amended to read  
4 as follows:

5 Sec. 2. DEFINITIONS. In this Act:

6 (1) "Advertising" means a direct or indirect  
7 solicitation or inducement to purchase and includes but is not  
8 necessarily limited to a solicitation or inducement made by print  
9 or electronic media, through the mail, or by personal contact.

10 (2) "Amenities" means all common areas of real  
11 property occupied by a membership camping resort and includes but  
12 is not necessarily limited to camping sites, swimming pools,  
13 stables, tennis courts, recreation buildings, restrooms and  
14 showers, laundry rooms, trading posts, grocery stores, and  
15 maintenance facilities.

16 (3) "Blanket encumbrance" means a mortgage, deed of  
17 trust, option to purchase, or vendor's lien, an interest obtained  
18 under a contract or agreement of sale, or other financing lien or  
19 encumbrance granted by an operator that secures or evidences the  
20 obligation to pay money or to sell or convey any campgrounds  
21 located in this state that are made available to purchasers by the  
22 operator, and that authorizes, permits, or requires the foreclosure  
23 or other disposition of the affected campground.

24 (4) "Business day" means any day except Saturday,  
25 Sunday, and federal holidays.

26 (5) "Camping site" means a space designed and promoted  
27 for the purpose of locating a trailer, tent, tent trailer, pickup

1 written statement that includes the information which is required  
2 by Subsection (a) of Section 5 of this Act.

3 (19) [~~(20)~~] "Purchaser" means a person, other than an  
4 operator, seller, or broker, who by means of voluntary transfer  
5 acquires a membership interest or membership right in a membership  
6 camping resort other than as security for an obligation.

7 (20) [~~(21)~~] "Reciprocal company" means any person,  
8 including an operator, who operates a reciprocal program.

9 (21) [~~(22)~~] "Reciprocal program disclosure statement"  
10 means a written statement that includes the information which is  
11 required by Subsection (c) of Section 5 of this Act.

12 (22) [~~(23)~~] "Reciprocal program" means any program  
13 under which the purchaser of a membership interest or membership  
14 right in a membership camping resort may use the facilities of a  
15 membership camping resort other than those of the purchaser's home  
16 resort.

17 (23) [~~(24)~~] "Seller" means a person, including an  
18 operator, who in the ordinary course of business offers a  
19 membership interest or membership right for sale to the public, but  
20 does not include a person who acquires a membership interest or  
21 membership right for his use and subsequently offers it for resale.

22 SECTION 3.21. Section 3, Texas Membership Camping Resort Act  
23 (Article 8880, Vernon's Texas Civil Statutes), is amended to read  
24 as follows:

25 Sec. 3. REGISTRATION; ADMINISTRATION. (a) No person shall  
26 offer or dispose of a membership interest or membership right under  
27 a membership camping contract in this state unless the operator is

1           (12) [~~(13)~~] "Membership interest" means a membership  
2 camping resort estate.

3           (13) [~~(14)~~] "Membership right" means a license,  
4 contract right, or other right entitling a purchaser to use camping  
5 sites or amenities at a membership camping resort.

6           (14) [~~(15)~~] "Offering" or "offer" means any  
7 advertisement, inducement, or solicitation and includes, but is not  
8 necessarily limited to, any attempt to encourage a person to  
9 purchase a membership interest or membership right.

10          (15) [~~(16)~~] "Operator" means a person who owns or  
11 provides a camping site or an amenity to a purchaser. The term  
12 does not include:

13                   (A) a person who owns or otherwise provides a  
14 mobile home park or a camping or recreational trailer park open to  
15 the general public with camping sites that are rented on a fee for  
16 use basis, and who does not solicit purchases of membership camping  
17 contracts; or

18                   (B) an outdoor service, facility, enterprise, or  
19 park that is owned or operated by, or under the control of, the  
20 United States, this state, or a political subdivision of this  
21 state.

22          (16) [~~(17)~~] "Person" means an individual, partnership,  
23 corporation, association, or other legal entity.

24          (17) [~~(18)~~] "Promotion" means any program or activity  
25 that is used to induce any person to attend a membership camping  
26 resort sales presentation.

27          (18) [~~(19)~~] "Promotional disclosure statement" means a

1 to a purchaser to evidence the purchaser's membership in the  
2 membership camping resort, and a sample copy of each agreement that  
3 a purchaser is required to execute;

4 (5) financial statements of the operator for the most  
5 recent fiscal quarter;

6 (6) a narrative description of the promotional plan  
7 for the offering of membership interests or membership rights;

8 (7) a copy of any agreement between the operator and  
9 any person owning, controlling, or managing the membership camping  
10 resort;

11 (8) a complete list of the locations and addresses of  
12 any sales offices located in this state;

13 (9) the names of any other states or foreign countries  
14 in which a registration of the operator or the membership camping  
15 contract has been filed;

16 (10) complete information concerning any adverse  
17 order, judgment, or decree entered by any court or administrative  
18 agency in connection with a membership camping resort operated by  
19 the operator or in which the operator had an interest at the time  
20 of the order, judgment, or decree;

21 (11) a description of any blanket encumbrance on the  
22 membership camping resort; and

23 (12) a membership camping resort disclosure statement  
24 and any required reciprocal disclosure statement required by  
25 Section 5 of this Act.

26 (c) The registration must be signed by the operator, by an  
27 officer or general partner of the operator, or by another person

1 registered with the secretary of state [~~commissioner~~]. If an  
2 operator also sells membership camping contracts, that operator  
3 must also comply with the registration requirements for membership  
4 camping contract brokers imposed under Section 4 of this Act.

5 (b) A registration filed under this section must be on a  
6 form prescribed by the secretary of state [~~commissioner~~] and must  
7 include, to the extent applicable, the following information:

8 (1) the operator's name, address, and the  
9 organizational form of the operator's business, including the date  
10 and jurisdiction under which the business was organized, the name  
11 and address of each of its officers in this state, and the name and  
12 address of each membership camping resort located in this state  
13 that is owned or operated, in whole or in part, by the operator;

14 (2) a list of all owners of 10 percent or more of the  
15 capital stock of the operator's business if the operator is not  
16 required to report under the Securities and Exchange Act of 1934  
17 (15 U.S.C. Sec. 78a et seq.);

18 (3) a brief description and certified copy of the  
19 instrument creating the operator's ownership of, or other right to  
20 use, the membership camping resort and the amenities that are to be  
21 available for use by purchasers, together with a copy of any lease,  
22 license, franchise, reciprocal agreement, or other agreement  
23 entitling the operator to use the membership camping resort and the  
24 amenities, and any material provision of the agreement that  
25 restricts a purchaser's use of the membership camping resort or the  
26 amenities;

27 (4) a sample copy of each instrument to be delivered

1           SECTION 3.22.   Sections 4(a), (c), (d), and (e), Texas  
2   Membership Camping Resort Act (Article 8880, Vernon's Texas Civil  
3   Statutes), are amended to read as follows:

4           (a) A person may not offer a membership interest or  
5   membership right in a membership camping resort or resell  
6   membership camping contracts in this state unless the person is  
7   registered with the secretary of state [~~commissioner~~]. Each  
8   application for registration as a seller or membership camping  
9   contract broker must be in writing and must be signed by the  
10   applicant.

11           (c) The secretary of state [~~commissioner~~] may require any  
12   additional information that is reasonably necessary to determine  
13   the good moral character of an applicant for registration.

14           (d) Each application for registration as a seller or  
15   membership camping contract broker must be accompanied by the  
16   required registration fee set by the secretary of state  
17   [~~commissioner~~] pursuant to Section 9 of this Act.

18           (e) The secretary of state [~~commissioner~~] may prescribe and  
19   publish forms to carry out the provisions of this section.

20           SECTION 3.23.   Section 9, Texas Membership Camping Resort Act  
21   (Article 8880, Vernon's Texas Civil Statutes), is amended to read  
22   as follows:

23           Sec. 9. FEES.   (a) The secretary of state [~~commissioner~~]  
24   shall set all fees imposed by this Act in amounts reasonable and  
25   necessary to cover the costs of administering this Act.

26           (b) The secretary of state [~~commissioner~~] shall deposit all  
27   fees received under this Act in the state treasury to the credit of

1 who holds a power of attorney for this purpose from the operator.  
2 If the registration is signed under a power of attorney, a copy of  
3 the power of attorney must be included with the registration. The  
4 registration must be submitted with the registration fee set by the  
5 secretary of state [~~commissioner~~] pursuant to Section 9 of this  
6 Act.

7 (d) The operator shall promptly file amendments to the  
8 registration reporting to the secretary of state [~~commissioners~~]  
9 any material and adverse change in any document contained in such  
10 registration. For the purposes of this subsection, a material and  
11 adverse change includes any change that significantly reduces or  
12 terminates either the applicant's or a purchaser's right to use the  
13 membership camping resort or any of the amenities described by the  
14 membership camping contract, but does not include minor changes  
15 covering the use of the membership camping resort, its amenities,  
16 or any reciprocal program.

17 (e) The secretary of state [~~commissioner~~] shall investigate  
18 all matters relating to the registration and may in his discretion  
19 require a personal inspection of the proposed membership camping  
20 resort by any persons designated by him.

21 (f) The secretary of state [~~commissioner~~] may prescribe and  
22 publish forms necessary to carry out the provisions of this Act.  
23 The secretary of state may [~~commissioner--shall~~] not approve or  
24 disapprove any registration and an operator may [~~shall~~] not  
25 represent to any person that the secretary of state [~~commissioner~~]  
26 endorses or approves the membership camping resort or membership  
27 camping contract.

1 will be awarded in connection with a promotion with intent not to  
2 award that prize, gift, or benefit;

3 (7) representing that registration with the secretary  
4 of state [~~commissioner~~] under Section 3 of this Act constitutes  
5 approval or endorsement by the secretary of state [~~commissioner~~] of  
6 the operator, the membership camping contract, or the membership  
7 camping resort;

8 (8) offering or disposing of a membership interest or  
9 membership right under a membership camping contract without having  
10 complied with the registration requirements under Section 3 of this  
11 Act; and

12 (9) offering for sale a membership interest or  
13 membership right in a membership camping resort without having  
14 complied with the registration requirements under Section 4 of this  
15 Act.

16 ARTICLE 4. CONFORMING AMENDMENTS

17 SECTION 4.01. Section 441.036(b), Government Code, is  
18 amended to read as follows:

19 (b) This section applies to the state auditor, State Board  
20 of Barber Examiners, State Purchasing and General Services  
21 Commission, Texas Cosmetology Commission, Texas State Board of  
22 Medical Examiners, Board of Pardons and Paroles, Board of Regents,  
23 Texas State University System, Texas Department of Licensing and  
24 Regulation [~~haber--and-standards~~], comptroller of public accounts,  
25 Court of Appeals for the Third Court of Appeals District, governor,  
26 Texas Department of Health, State Board of Insurance, Legislative  
27 Budget Board, Parks and Wildlife Commission, Railroad Commission of



1 a special fund to be used in the administration of this Act.

2 SECTION 3.24. Section 10(a), Texas Membership Camping Resort  
3 Act (Article 8880, Vernon's Texas Civil Statutes), is amended to  
4 read as follows:

5 (a) A person commits a false, misleading, or deceptive act  
6 or practice within the meaning of Subsections (a) and (b), Section  
7 17.46, Deceptive Trade Practices-Consumer Protection Act (Section  
8 17.46, Business & Commerce Code), by engaging in any of the  
9 following acts:

10 (1) failing to disclose information concerning a  
11 membership interest or membership right required by Section 5 of  
12 this Act;

13 (2) failing to provide a purchaser with a copy of the  
14 membership camping contract and any other document signed by the  
15 purchaser or the operator in connection with the purchase of a  
16 membership interest or membership right;

17 (3) making false or misleading statements of a  
18 material nature concerning camping sites or amenities available to  
19 the purchaser;

20 (4) predicting specific or immediate increases in the  
21 value of a membership interest or membership right without a  
22 reasonable basis for such predictions;

23 (5) making false or misleading statements of a  
24 material nature concerning the conditions under which a purchaser  
25 of a membership interest or membership right may use or occupy  
26 other membership camping resort camping sites or amenities;

27 (6) representing that a prize, gift, or other benefit

1           (a) A tax lien to secure the payment of a tax and any  
2 penalties and interest imposed on a manufactured home does not  
3 attach to the real property on which the manufactured home is  
4 located, even if the manufactured home is affixed to the real  
5 property by installation on a permanent foundation, if on the  
6 January 1 on which the tax is imposed, the manufactured home is  
7 subject to a lien of record on a document of title issued on the  
8 manufactured home by the commissioner of licensing and regulation  
9 [~~Texas-Department-of-Labor-and-Standards~~].

10           SECTION 4.05. Sections 32.015(a), (b), (c), and (e), Tax  
11 Code, are amended to read as follows:

12           (a) The collector for a taxing unit may file notice of the  
13 unit's tax lien on a manufactured home with the Texas Department of  
14 Licensing and Regulation [~~Labor-and-Standards~~] if the tax has not  
15 been paid by January 31 of the year following the year for which  
16 the tax is assessed. The notice must include:

17                   (1) the name and address of the owner of the  
18 manufactured home; and

19                   (2) the amount of tax owed, the tax year for which the  
20 tax was imposed, and the name of the taxing unit that imposed the  
21 tax; and

22                   (3) the correct identification number of the  
23 manufactured home.

24           (b) The collector may simultaneously file notice of tax  
25 liens of all the taxing units served by the collector. However,  
26 notice of any lien for taxes for the prior calendar year must be  
27 filed with the Texas Department of Licensing and Regulation [~~Labor~~

1 Texas, Texas Real Estate Commission, secretary of state, State  
2 Securities Board, Teacher Retirement System of Texas, Central  
3 Education Agency, Texas State Library, Texas Water Commission, and  
4 the state treasury department.

5 SECTION 4.02. Section 11.432(a), Tax Code, is amended to  
6 read as follows:

7 (a) For a manufactured home to qualify for an exemption  
8 under Section 11.13 of this code, the application for the exemption  
9 must be accompanied by a copy of a document of title to the  
10 manufactured home issued by the commissioner of licensing and  
11 regulation [~~Texas-Department-of-Labor-and-Standards~~] under Section  
12 19, Texas Manufactured Housing Standards Act (Article 5221f,  
13 Vernon's Texas Civil Statutes), showing that the individual  
14 applying for the exemption is the owner of the manufactured home.

15 SECTION 4.03. Section 21.25, Tax Code, is amended to read as  
16 follows:

17 Sec. 21.25. EXEMPTION. The requirement by this subchapter  
18 of a record and report of movement of a mobile home in this state  
19 does not apply to a move that begins outside this state and ends  
20 outside this state nor to any move which is reported to the Texas  
21 Department of Licensing and Regulation [~~Labor-and-Standards~~] by a  
22 registrant pursuant to the provisions of the Texas Manufactured  
23 Housing Standards Act and rules and regulations issued pursuant  
24 thereto.

25 SECTION 4.04. Section 32.014(a), Tax Code, as added by  
26 Section 2, Chapter 633, Acts of the 70th Legislature, Regular  
27 Session, 1987, is amended to read as follows:

1 the tax has not been set forth on the invoice or bill of sale on  
2 the initial sale and paid to the manufacturer by the retailer or  
3 other person to whom or for whom the manufactured home is sold,  
4 shipped, or consigned. The lien shall be filed with the county  
5 clerk of the county of this state in which such new manufactured  
6 home is installed for use and occupancy. In addition, the lien  
7 shall be filed and recorded with the Texas Department of Licensing  
8 and Regulation [~~Laber-and-Standards~~].

9 SECTION 4.07. Subsection A, Section 2.01, Texas Non-Profit  
10 Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil  
11 Statutes), is amended to read as follows:

12 A. Except as hereinafter in this Article expressly excluded  
13 herefrom, non-profit corporations may be organized under this Act  
14 for any lawful purpose or purposes, which purposes shall be fully  
15 stated in the articles of incorporation. Such purpose or purposes  
16 may include, without being limited to, any one or more of the  
17 following: charitable, benevolent, religious, eleemosynary,  
18 patriotic, civic, missionary, educational, scientific, social,  
19 fraternal, athletic, aesthetic, agricultural and horticultural; and  
20 the conduct of professional, commercial, industrial, or trade  
21 associations; and animal husbandry. Subject to the provisions of  
22 Chapter 2, Title 83, of the Revised Civil Statutes of Texas, 1925,  
23 and of such Chapter or any part thereof as it may hereafter be  
24 amended, a corporation may be organized under this Act if any one  
25 or more of its purposes for the conduct of its affairs in this  
26 State is to organize laborers, working men, or wage earners to  
27 protect themselves in their various pursuits. [~~Provided,--however,~~

1     ~~and-standards~~] prior to May 1 of the following year. Any lien for  
2     which the notice is not filed by such date is extinguished and is  
3     not enforceable.

4             (c) If the information on the tax lien notice matches that  
5     of the title of record, the Texas Department of Licensing and  
6     Regulation [~~Labor-and-Standards~~] shall record a tax lien notice  
7     filed under this section and shall thereafter indicate the  
8     existence of the lien on any document of title for the manufactured  
9     home issued by the commissioner of licensing and regulation  
10    ~~[department]~~ under Section 19, Texas Manufactured Housing Standards  
11    Act (Article 5221f, Vernon's Texas Civil Statutes), until the  
12    collector for the taxing unit files a notice under Subsection (e)  
13    of this section canceling the notice. Simultaneously with the  
14    recording of a tax lien, the Texas Department of Licensing and  
15    Regulation [~~Labor-and-Standards~~] must mail a notice of the tax lien  
16    to any other lienholders of record.

17            (e) If a tax lien for which notice has been filed under this  
18    section ceases to exist, the collector for the taxing unit shall  
19    file a notice with the Texas Department of Licensing and Regulation  
20    ~~[Labor-and-Standards]~~ stating that the lien no longer exists. The  
21    collector shall file the notice not later than the 10th day after  
22    the date of payment of the taxes subject to the lien.

23            SECTION 4.06. Section 158.152, Tax Code, is amended to read  
24    as follows:

25            Sec. 158.152. LIEN. The state has a lien on each new  
26    manufactured home installed for use and occupancy in this state for  
27    the collection and payment of the tax imposed by this chapter if

1 Dental Examiners that the applicant incorporators are reputable  
2 citizens of the State of Texas and are of good moral character and  
3 that the corporation sought to be formed will be in the best  
4 interest of the public health. A corporation formed hereunder  
5 shall have not less than twelve (12) directors, nine (9) of whom  
6 shall be dentists licensed by the Texas State Board of Dental  
7 Examiners to practice dentistry in this state and be actively  
8 engaged in the practice of dentistry in this state. A corporation  
9 formed hereunder shall maintain not less than thirty percent (30%)  
10 of the number of dentists actually engaged in the practice of  
11 dentistry in this state as participating or contracting dentists,  
12 and shall file with the Texas State Board of Dental Examiners each  
13 September the names and addresses of all contracting or  
14 participating dentists. A corporation formed hereunder shall not  
15 (1) prevent any patient from selecting the licensed dentist of his  
16 choice to render dental services to him, (2) deny any licensed  
17 dentist the right to participate as a contracting dentist to  
18 perform the dental services contracted for by the patient, (3)  
19 discriminate among patients or licensed dentists regarding payment  
20 or reimbursement for the cost of performing dental services  
21 provided the dentist is licensed to perform the dental service, or  
22 (4) authorize any person to regulate, interfere, or intervene in  
23 any manner in the diagnosis or treatment rendered by a licensed  
24 dentist to his patient. A corporation formed hereunder may require  
25 the attending dentist to provide a narrative oral or written  
26 description of the dental services rendered for the purpose of  
27 determining benefits or providing proof of treatment. Diagnostic

1 that--no--articles--of--incorporation--shall-be-issued-hereafter-to  
2 laborers,-working-men-or-wage-earners,-or-amendment--granted--to--a  
3 charter--or--articles--of--incorporation-of-a-corporation-previously  
4 created-to-organize-laborers,-working-men-or-wage-earners,-or--that  
5 may--be--created--hereafter--under--this--Act-to-organize-laborers,  
6 working-men-or-wage-earners,-by--the--Secretary--of--State--to--any  
7 person,-association--or--corporation--for-such-purposes-without-an  
8 investigation-first-having-been--made--by--the--Labor--Commissioner  
9 concerning--such--application--and--a-favorable-recommendation-made  
10 thereon-by-said-Labor-Commissioner-to-the-Secretary-of--State.---No  
11 investigation--or-recommendation-by-the-Labor-Commissioner-shall-be  
12 required-or-made-of--applications--from--farmers--for--articles--of  
13 incorporation: ]

14 (1) Charitable corporations may be formed for the  
15 purpose of operating a Dental Health Service Corporation which  
16 service corporation will manage and coordinate the relationship  
17 between the contracting dentist, who will perform the dental  
18 services, and the patient who will receive such services where such  
19 patient is a member of a group which has contracted with the Dental  
20 Health Service Corporation to provide dental care to members of  
21 that group. An application for a charter under this Section shall  
22 have attached as exhibits (1) an affidavit by the applicants that  
23 not less than thirty percent (30%) of the dentists legally engaged  
24 in the practice of dentistry in this state together with their  
25 names and addresses have signed contracts to perform the required  
26 dental services for a period of not less than one (1) year, after  
27 incorporation, and (2) a certification by the Texas State Board of

1 exceed one year but the Court shall permit said building to be  
2 occupied or used if the owner, lessee, tenant or occupant thereof  
3 shall give bond with sufficient surety to be provided by the Court  
4 in the sum of not less than Five Hundred (\$500.00) Dollars nor more  
5 than One Thousand (\$1,000.00) Dollars, payable to the Judge of said  
6 Court, conditioned that said corporation, its agents, servants,  
7 officers or employees will thereafter comply with the orders,  
8 rules, regulations or ordinances which have been or may be  
9 promulgated, fixing the rents, charges, or rate of return, areas  
10 and methods of operation of said corporation and that it will pay  
11 all fines and costs that may be assessed in contempt proceedings  
12 against its agents, servants, officers and employees for the  
13 violation of any writ of injunction existing, or which may  
14 thereafter be issued.

15 SECTION 4.09. Section 3(8), Chapter 6A, Title 79, Revised  
16 Statutes (Article 5069-6A.03, Vernon's Texas Civil Statutes), is  
17 amended to read as follows:

18 (8) In a transaction not involving real estate, no  
19 documentary fee for the preparation of credit documents shall be  
20 charged to the consumer and the only official fees which can be  
21 charged to the consumer are (i) the title fee and (ii) the  
22 installation fee, both as set by the Texas Commission of Licensing  
23 and Regulation [~~Commissioner--of--the--Department--of--Labor--and~~  
24 ~~Standards~~], and (iii) the permit fee for highway movement to the  
25 installation site as paid to the State Department of Highways and  
26 Public Transportation.

27 SECTION 4.10. Article 16.06(1), Business Opportunity Act



1 aids used in the course of treatment may be requested by the  
2 corporation, but may not be required for any purpose.

3 SECTION 4.08. Section 10, Chapter 42, Acts of the 42nd  
4 Legislature, 3rd Called Session, 1932 (Article 1524k, Vernon's  
5 Texas Civil Statutes), is amended to read as follows:

6 Sec. 10. If any agent, servant, officer or employee of any  
7 corporation created under the provisions of this Act shall wilfully  
8 violate any order, rule, regulation or ordinance fixing rents,  
9 charges, rate of return, areas and method of operation, the  
10 District Court of the County in which the property of such  
11 corporation is situated, upon application of the governing body of  
12 the municipality or county, where the properties to be owned or  
13 operated are situated outside the corporate limits of any organized  
14 town, city or village wherein the corporation owns property [~~or~~  
15 ~~upon--application--of--any--Labor--Inspector--employed--by--the--State--of~~  
16 ~~Texas--when--authorized--to--so--act--by--the--Commissioner--of--Labor~~  
17 ~~Statistics--of--the--State--of--Texas~~], may issue during its term or in  
18 vacation a temporary writ of injunction restraining such agents,  
19 servants, officers or employees from any violation of such order,  
20 rule, regulation or ordinance and which temporary writ of  
21 injunction may be made permanent upon notice and hearing in the  
22 manner now provided by law. No bond shall be required before  
23 issuing any such temporary or permanent injunction and if any such  
24 injunction is violated by the agents, servants, officers or  
25 employees of said corporation, the Court, in addition to its power  
26 to punish for contempt, may order that the building of such  
27 corporation shall not be used or occupied for any period not to

1 Commission regulations entitled Disclosure Requirements and  
2 Prohibitions Concerning Franchising and Business Opportunity  
3 Ventures (16 Code of Federal Regulations Section 436) if the  
4 franchisor complies in all material respects in the State of Texas  
5 with the disclosure requirements and prohibitions concerning  
6 franchising in such Federal Trade Commission regulations. Any  
7 alternative franchise disclosure statements permitted by the  
8 Federal Trade Commission may be used in lieu of its franchise  
9 disclosure requirements. This subsection applies provided that  
10 prior to offering for sale or selling a franchise in this state, a  
11 person files a notice with the secretary of state, along with any  
12 reasonable fee that may be charged by the secretary of state to  
13 cover the costs incurred as a result of this filing. The form of  
14 the notice shall be prescribed by the secretary of state and shall  
15 require only the name of the franchisor, the name under which the  
16 franchisor intends to do business, and the franchisor's principal  
17 business address.

18 SECTION 4.11. Section 7(a), Chapter 201, Acts of the 60th  
19 Legislature, Regular Session, 1967 (Article 5182a, Vernon's Texas  
20 Civil Statutes), is amended to read as follows:

21 (a) For purposes of establishing a safety classification for  
22 employers, the board is authorized, empowered, and directed to  
23 secure medical and compensation costs data regularly compiled by  
24 the State Board of Insurance in carrying out its rate-making duties  
25 and functions with respect to the employers' liability and workers'  
26 compensation insurance law[~~7--to-obtain-from-the-commissioner-of-the~~  
27 ~~Texas-Department-of-Labor-and-Standards--such--statistical--details~~

1 (Article 5069-16.01 et seq., Vernon's Texas Civil Statutes), is  
2 amended to read as follows:

3 (1) "Business opportunity" does not include:

4 (A) the sale or lease of an established and  
5 ongoing business or enterprise, whether comprised of one or more  
6 than one component businesses or enterprises, where the sale or  
7 lease represents an isolated transaction or series of transactions  
8 involving a bona fide change of ownership or control of such  
9 business or enterprise or liquidation thereof; [ex]

10 (B) any contract or agreement by which a  
11 retailer of goods or services sells the inventory of one or more  
12 ongoing leased departments to a purchaser who is granted the right  
13 to sell the goods or services within or adjoining the retail  
14 business establishment as a department or division thereof; [ex]

15 (C) transactions regulated by the Texas Motor  
16 Vehicle Commission, Texas Department of Licensing and Regulation  
17 [~~Labor--and-Standards~~], State Board of Insurance, or the Texas Real  
18 Estate Commission when engaged in by persons licensed by such  
19 agencies; [ex]

20 (D) real estate syndications; [ex]

21 (E) a sale or lease to an existing or beginning  
22 business enterprise which also sells or leases equipment, products,  
23 and supplies or performs services (1) which are not supplied by the  
24 seller and (2) which the purchaser does not utilize with the  
25 equipment, products, supplies, or services of the seller; or

26 (F) any contract or agreement defined as a  
27 "product or package franchise" under the then current Federal Trade

1 as amended, in the promotion and maintenance of a system of public  
2 employment offices. The provisions of the said Act of Congress, as  
3 amended, are hereby accepted by this State in conformity with  
4 Section 4 of said Act, and this State will observe and comply with  
5 the requirements thereof. The Texas Employment Commission is  
6 hereby designated and constituted the agency of this State for the  
7 purposes of said Act.

8 (b) Financing: All monies received by this State under the  
9 said Act of Congress, as amended, shall be paid into the special  
10 "Employment Service Account" in the Unemployment Compensation  
11 Administration Fund, and said monies are hereby made available to  
12 the Texas Unemployment Compensation Commission to be expended as  
13 provided by this Section and by said Act of Congress[~~7--and--any~~  
14 ~~unexpended-balance-of-funds-appropriated-or-allocated-either-by-the~~  
15 ~~State--of--Texas--or--the--Federal--Government--to--the-Texas-State~~  
16 ~~Employment-Service-as-a-division-of-the-Bureau-of-Labor-Statistics,~~  
17 ~~is-hereby,--upon-the-passage-of-this-Act,--transferred-to-the-special~~  
18 ~~"Employment--Service--Account"--in--the--Unemployment--Compensation~~  
19 ~~Administration---Fund]~~. For the purpose of establishing and  
20 maintaining free public employment offices, the Commission is  
21 authorized to enter into agreements with any political subdivision  
22 of this State or with any private, and/or non-profit organization,  
23 and as a part of any such agreement the Commission may accept  
24 monies, services, or quarters as a contribution to the special  
25 "Employment Service Account."

26 [~~{e)--Invalidity-of-Transfer---In-the-event-that-this-Act,--or~~  
27 ~~any--section--thereof,--in-so-far-as-the-same-shall-affect-the-Texas~~

1 as--are--collected--by--that-department] and to collect and compile  
2 information relating to employers' accident frequency rate,  
3 existence and implementation of private safety programs, man-hour  
4 losses due to injuries, and other facts reflecting accident  
5 experience and, based upon all such factors to separate employers  
6 into such classifications as the board deems appropriate in order  
7 to carry out the purposes of this Act.

8 SECTION 4.12. Section 12, Texas Unemployment Compensation  
9 Act (Article 5221b-10, Vernon's Texas Civil Statutes), is amended  
10 to read as follows:

11 Sec. 12. (a) The Texas State Employment Service is~~[7-as~~  
12 ~~provided-for-under-Act-of--the--Forty-fourth--Legislature,--Regular~~  
13 ~~Session,--Chapter--236,--page--552,--is--hereby--transferred-to-the~~  
14 ~~Commission-as]~~ a division of the Texas Employment Commission  
15 ~~[thereof]~~. The Commission, through such division, shall establish  
16 and maintain free public employment offices in such number and in  
17 such places as may be necessary for the proper administration of  
18 this Act, and for purposes of performing such duties, as are within  
19 the purview of the Act of Congress entitled "An Act to provide for  
20 the establishment of a national employment system and for  
21 cooperation with the States in the promotion of such system and for  
22 other purposes," approved June 6, 1933, (48 Stat. 113; U.S.C.,  
23 Title 29, Section 49(c)) as amended. It shall be the duty of the  
24 Commission to cooperate with any official or agency of the United  
25 States having powers or duties under the provisions of the said Act  
26 of Congress, as amended, and to do and perform all things necessary  
27 to secure to this State the benefits of the said Act of Congress,

1 section to a tow truck owner who:

2 (1) applies to the county tax collector in the county  
3 of the owner's residence on a form approved by the department;

4 (2) submits with the application a certified copy of  
5 the certificate of registration issued by the commissioner of  
6 licensing and regulation [~~Texas-Department-of-Labor-and-Standards~~]  
7 for that tow truck; and

8 (3) pays the fee prescribed by Subsection (e) of this  
9 section.

10 SECTION 4.15. Section C(1), Article 6701-1/2, Revised  
11 Statutes, is amended to read as follows:

12 (1) The State Department of Highways and Public  
13 Transportation shall only issue permits to persons registered as  
14 manufacturers or retailers with the commissioner of licensing and  
15 regulation [~~Texas---Department---of---Labor---and---Standards~~] or  
16 certificated for the transportation of manufactured housing by the  
17 Railroad Commission of Texas or the Interstate Commerce Commission  
18 except as otherwise expressly authorized by this section. The  
19 registration number or the certificate number of the person to whom  
20 the permit is issued shall be affixed to the rear of the  
21 manufactured home during transportation with letters and numbers  
22 which are at least eight (8) inches in height.

23 ARTICLE 5. REPEALER

24 SECTION 5.01. The following laws are repealed:

25 (1) Articles 5144, 5144a, 5145, 5145a, 5146, 5147,  
26 5147a, 5148, 5148a, 5149, 5150, 5150a, 5151, 5151b, 5151c, 5156,  
27 5157, 5158, 5159, 5173, 5174, 5175, 5179, 5179a, 5180, 5892, 5901,

1 State---Employment---Service,---shall---be---held---or---declared  
2 unconstitutional---or---invalid,--then-in-that-event-Chapter-236,--page  
3 552,--Acts-of-the-Regular-Session-of--the--Forty-fourth--Legislature  
4 establishing-the-Texas-State-Employment-Service-shall-be-and-remain  
5 in--full--force--and--effect-as-it-was-prior-to-the-passage-of-this  
6 Act.]

7 SECTION 4.13. Section 3(a), Chapter 873, Acts of the 69th  
8 Legislature, Regular Session, 1985 (Article 6252-28, Vernon's Texas  
9 Civil Statutes), is amended to read as follows:

10 (a) The State Employee Incentive Commission is created. The  
11 commission is composed of the state auditor, the comptroller of  
12 public accounts, the state treasurer, the agency administrator of  
13 the Texas Employment Commission, the commissioner [executive  
14 ~~director~~] of licensing and regulation [~~the--Texas--Department--of~~  
15 ~~Labor--and--Standards~~], the executive director of the Legislative  
16 Budget Board, and three public members who must have experience in  
17 the administration of incentive programs and other related programs  
18 used in private industry. The governor, lieutenant governor, and  
19 speaker of the house of representatives shall each appoint one  
20 public member for a two-year term. A vacancy in the term of a  
21 public member shall be filled by the official who made the original  
22 appointment.

23 SECTION 4.14. Section 5i(c), Chapter 88, General Laws, Acts  
24 of the 41st Legislature, 2nd Called Session, 1929 (Article  
25 6675a-5i, Vernon's Texas Civil Statutes), is amended to read as  
26 follows:

27 (c) The department shall issue license plates under this

1 Legislature, Regular Session, 1937 (Article 5221c, Vernon's Texas  
2 Civil Statutes);

3 (11) Sections 7(c), (h), and (q), Texas Manufactured  
4 Housing Standards Act (Article 5221f, Vernon's Texas Civil  
5 Statutes);

6 (12) Sections 3(i) and 4, Chapter 320, Acts of the  
7 64th Legislature, Regular Session, 1975 (Article 8700, Vernon's  
8 Texas Civil Statutes);

9 (13) Sections 3(c) and (i), Air Conditioning and  
10 Refrigeration Contractor License Law (Article 8861, Vernon's Texas  
11 Civil Statutes);

12 (14) Section 10, Air Conditioning and Refrigeration  
13 Contractor License Law (Article 8861, Vernon's Texas Civil  
14 Statutes); and

15 (15) Section 111.006, Agriculture Code.

16 ARTICLE 6. TRANSITION AND MISCELLANEOUS PROVISIONS

17 SECTION 6.01. CREATION OF COMMISSION; INITIAL APPOINTMENTS.

18 (a) The Texas Commission of Licensing and Regulation is created on  
19 the effective date of this Act.

20 (b) In making the initial appointments to the Texas  
21 Commission of Licensing and Regulation, the governor shall  
22 designate two members for terms expiring February 1, 1991, two  
23 members for terms expiring February 1, 1993, and two members for  
24 terms expiring February 1, 1995.

25 SECTION 6.02. DEPARTMENT NAME CHANGE. The name of the Texas  
26 Department of Labor and Standards is changed to the Texas  
27 Department of Licensing and Regulation. Any reference in the law



1 5901a, 5901b, 5902, 5903, 5904, 5904a, 5905, 5905a, 5906, 5906a,  
2 5907, 5907a, 5908, 5908a, 5909, 5909a, 5910, 5910a, 5911, 5911a,  
3 5912, 5912a, 5913, 5913a, 5914, 5914a, 5914b, 5915, 5915a, 5917,  
4 5917a, 5918, 5918a, 5919, 5919a, 5920, 5920a, and 6814, Revised  
5 Statutes;

6 (2) Sections 5(d), 8(c), and 10, Article 5221f-1,  
7 Revised Statutes;

8 (3) Section 6(c), Vehicle Storage Facility Act  
9 (Article 6687-9a, Vernon's Texas Civil Statutes);

10 (4) Chapter 434, Acts of the 63rd Legislature, Regular  
11 Session, 1973 (Article 5151a, Vernon's Texas Civil Statutes);

12 (5) Section 6, Chapter 104, Acts of the 48th  
13 Legislature, Regular Session, 1943 (Article 5154a, Vernon's Texas  
14 Civil Statutes);

15 (6) Section 7A(e), Chapter 234, Acts of the 51st  
16 Legislature, Regular Session, 1949 (Article 5221a-5, Vernon's Texas  
17 Civil Statutes);

18 (7) Sections 6A(e) and 7(e), Chapter 263, Acts of the  
19 66th Legislature, Regular Session, 1979 (Article 5221a-7, Vernon's  
20 Texas Civil Statutes);

21 (8) Section 11(e), Chapter 222, Acts of the 70th  
22 Legislature, Regular Session, 1987 (Article 5221a-8, Vernon's Texas  
23 Civil Statutes);

24 (9) Sections 1(4) and (9), Chapter 436, Acts of the  
25 45th Legislature, Regular Session, 1937 (Article 5221c, Vernon's  
26 Texas Civil Statutes);

27 (10) Sections 11 and 13, Chapter 436, Acts of the 45th

1 after the effective date of this Act.

2 (b) For the purposes of this section, an offense is  
3 committed before the effective date of this Act if any element of  
4 the offense occurs before that date. An offense committed before  
5 the effective date of this Act is covered by the law in effect when  
6 the offense was committed, and the former law is continued in  
7 effect for this purpose.

8 SECTION 6.07. WAGE CLAIMS. (a) The change in law made by  
9 Section 4, Article 5155, Revised Statutes, as amended by this Act,  
10 relating to the processing of a wage claim by the Texas Employment  
11 Commission, applies only to a wage claim filed on or after January  
12 1, 1990.

13 (b) Not later than January 1, 1990, the Texas Department of  
14 Licensing and Regulation shall transfer any outstanding wage claims  
15 it received for processing before that date to the Texas Employment  
16 Commission. The Texas Employment Commission shall process the  
17 claims in accordance with the law in effect on the date that the  
18 claim was filed with the Texas Department of Labor and Standards or  
19 its successor, and the former law is continued in effect for this  
20 purpose.

21 (c) The Texas Employment Commission may receive and spend  
22 appropriations made to that agency for implementation of the  
23 functions transferred to that agency under this Act beginning  
24 September 1, 1989. The Texas Department of Licensing and  
25 Regulation may receive and spend appropriations made to that agency  
26 for the processing of wage claims from September 1, 1989, through  
27 December 31, 1989.

1 to the Texas Department of Labor and Standards or the commissioner  
2 of labor and standards means, respectively, the Texas Department of  
3 Licensing and Regulation or the commissioner of licensing and  
4 regulation.

5 SECTION 6.03. TRANSFER OF RECORDS. (a) All records in the  
6 custody of the Texas Department of Labor and Standards relating to  
7 the enforcement of the state laws regarding payment of wages and  
8 child labor are transferred to the Texas Employment Commission on  
9 the effective date of this Act.

10 (b) All records in the custody of the Texas Department of  
11 Labor and Standards relating to the enforcement of the state laws  
12 regarding the operation of health spas and membership camping  
13 resorts are transferred to the office of the secretary of state on  
14 the effective date of this Act.

15 SECTION 6.04. INITIAL POLICY STATEMENT. The policy  
16 statement required under Section 15, Article 9100, Revised  
17 Statutes, as added by this Act, must be filed not later than  
18 October 30, 1989.

19 SECTION 6.05. ADMINISTRATIVE PENALTIES. Section 17, Article  
20 9100, Revised Statutes, as added by this Act, providing for the  
21 assessment of administrative penalties by the commissioner of  
22 licensing and regulation, applies only to a violation that occurs  
23 on or after the effective date of this Act.

24 SECTION 6.06. BOILER OFFENSE. (a) The change in law made  
25 by Section 12, Chapter 436, Acts of the 45th Legislature, Regular  
26 Session, 1937 (Article 5221c, Vernon's Texas Civil Statutes), as  
27 amended by this Act, applies only to an offense committed on or

1           SECTION 6.08. HEALTH SPAS.   (a) The security requirements  
2 imposed under Section 10, Health Spa Act (Article 52211, Vernon's  
3 Texas Civil Statutes), as amended by this Act, apply to a health  
4 spa that opens an initial facility on or after September 1, 1989,  
5 and to each additional location opened on or after September 1,  
6 1989, by a health spa in operation on August 31, 1989.

7           (b) A health spa in operation at locations established  
8 before September 1, 1989, is subject to the security requirements  
9 in effect on August 31, 1989, and the former law is continued in  
10 effect for that purpose.

11          SECTION 6.09. EFFECTIVE DATE.   This Act takes effect  
12 September 1, 1989.

13          SECTION 6.10. EMERGENCY. The importance of this legislation  
14 and the crowded condition of the calendars in both houses create an  
15 emergency and an imperative public necessity that the  
16 constitutional rule requiring bills to be read on three several  
17 days in each house be suspended, and this rule is hereby suspended.

S. B. No. 411

By Parker

AN ACT relating to the continuation of the Texas Department of Labor and Standards under the new name, the Texas Department of Licensing and Regulation, and to the administration and functions of that department.

2-3-89 Filed with the Secretary of the Senate

FEB 8 1989 Read and referred to Committee on ECONOMIC DEVELOPMENT

Reported favorably \_\_\_\_\_

Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

Ordered not printed

Laid before the Senate

Senate and Constitutional Rules to permit consideration suspended by: { unanimous consent  
\_\_\_\_\_ yeas, \_\_\_\_\_ nays

Read second time, \_\_\_\_\_, and ordered engrossed by: { unanimous consent  
a viva voce vote  
\_\_\_\_\_ yeas, \_\_\_\_\_ nays

Caption ordered amended to conform to the body of the bill.

Senate and Constitutional 3 Day Rule suspended by a vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays.

Read third time, \_\_\_\_\_, and passed by \_\_\_\_\_ yeas, \_\_\_\_\_ nays.

\_\_\_\_\_  
SECRETARY OF THE SENATE

OTHER ACTION:

Engrossed

Sent to House

Engrossing Clerk

Received from the Senate

Read first time and referred to Committee on \_\_\_\_\_

Reported favorably amended, sent to Printer at \_\_\_\_\_

Printed and Distributed \_\_\_\_\_

Sent to Committee on Calendars \_\_\_\_\_

Read Second time (amended): passed to third reading (failed)

by (Non-Record Vote) Record Vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays \_\_\_\_\_ present not voting.

Constitutional Rule requiring bills to be read on three several days suspended (failed to suspend) by a four-fifths vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays \_\_\_\_\_ present not voting.

Read third time (amended): finally passed (failed) by a (Non-Record Vote) Record Vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays \_\_\_\_\_ present not voting.

Caption ordered amended to conform to body of bill.

Returned to Senate.

\_\_\_\_\_  
CHIEF CLERK OF THE HOUSE

Returned from House without amendment.

Returned from House with \_\_\_\_\_ amendments.

Concurred in House amendments by a viva voce vote \_\_\_\_\_ yeas, \_\_\_\_\_ nays.

\_\_\_\_\_ Refused to concur in House amendments and requested the appointment of a Conference Committee to adjust the differences.

\_\_\_\_\_ Senate conferees instructed.

\_\_\_\_\_ Senate conferees appointed: \_\_\_\_\_, Chairman; \_\_\_\_\_,  
\_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_

\_\_\_\_\_ House granted Senate request. House conferees appointed: \_\_\_\_\_, Chairman;  
\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_ Conference Committee Report read and filed with the Secretary of the Senate.

\_\_\_\_\_ Conference Committee Report adopted on the part of the House by: \_\_\_\_\_

{ a viva voce vote  
\_\_\_\_\_ yeas, \_\_\_\_\_ nays

\_\_\_\_\_ Conference Committee Report adopted on the part of the Senate by: \_\_\_\_\_

{ a viva voce vote  
\_\_\_\_\_ yeas, \_\_\_\_\_ nays

**OTHER ACTION:**

\_\_\_\_\_ Recommitted to Conference Committee

\_\_\_\_\_ Conferees discharged.

\_\_\_\_\_ Conference Committee Report failed of adoption by: \_\_\_\_\_

{ a viva voce vote  
\_\_\_\_\_ yeas, \_\_\_\_\_ nays

800  
Des